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Ministry of
Labour

Report of the Task Force on Employee Benefits under Part X of the Employment Standards Act

April 1975

REPORT OF THE TASK FORCE ON EMPLOYEE BENEFITS UNDER PART X OF THE EMPLOYMENT STANDARDS ACT. (Formerly the Task Force on Section 4(1)(g) of the Ontario Human Rights Code.)

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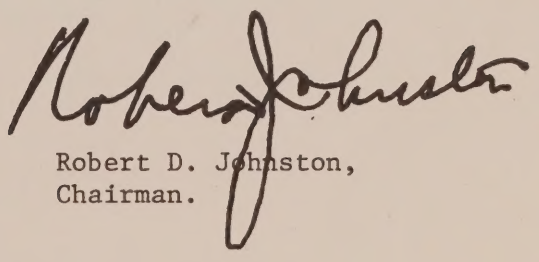
LETTER OF TRANSMITTAL

The Honourable John MacBeth,
Minister of Labour,
Province of Ontario,
Parliament Buildings,
Toronto, Ontario.

On behalf of the Task Force on Employee Benefits Under Part X of the Employment Standards Act, I am pleased to submit our final Report for your consideration.



Robert D. Johnston,
Chairman.

Toronto,

April, 1975.

TERMS OF REFERENCE

(Excerpt from Order-in-Council Numbered
OC - 325/73 dated January 31st, 1973)

WHEREAS certain provisions of Section 4 (1) (g) of the Ontario Human Rights Code do not apply to any bona fide pension or insurance plan until a day to be named by the Lieutenant Governor by his proclamation; and

WHEREAS the coming into force of such provisions may have significant and complex effects on pension and insurance plans;

The Honourable the Minister of Labour therefore recommends the appointment of a committee, advisory to the Minister of Labour, to be known as the Task Force on Section 4 (1) (g) of the Ontario Human Rights Code, to examine into and report upon the anticipated impact of bringing the aforementioned provisions into force.

The Committee of Council concur in the recommendation of the Honourable the Minister of Labour and advise that the same be acted on.

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CHAPTER ONE:

INTRODUCTION

A. THE DEVELOPMENT OF LEGISLATION IN ONTARIO

In Ontario, equal employment opportunity legislation dates from 1951, when Ontario became the first jurisdiction in Canada to enact a Fair Employment Practices Act. In the same year the first Female Employees Fair Remuneration Act was passed, requiring equal pay for equal work. The Ontario Human Rights Commission was established between 1961 and 1962, when these and other human rights statutes were consolidated into one Code. (1) The original Code prohibited discrimination in employment or any term or condition of employment on the basis of race, creed, colour, nationality, ancestry, or place of origin. Pension and other employee benefit plans, therefore, could not differentiate on the basis of these protected grounds.

The first Age Discrimination Act was enacted in 1966, in order to protect older workers between the ages of 40 and 65 from discrimination in employment. Although this Act prohibited discrimination on the basis of age with regard to any condition of employment, a specific exemption stated that, "Nothing in this Act affects the operation of a bona fide retirement or pension plan or the terms or conditions of any bona fide group or employee insurance plan". (2) In general, therefore, pension plan and other employee benefit provisions could differentiate on the basis of age.

In 1968, the equal pay for equal work provision of the Code was strengthened and transferred to the Employment Standards Act. Although these substantive and procedural amendments have assisted in the removal of pay differences between men and women who are performing equal work, the

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1. For a lengthier treatment of this history see Daniel G. Hill "The Role of A Human Rights Commission: The Ontario Experience" (1969) 19 University of Toronto Law Journal, 390-401

2. Statutes of Ontario, 1966, Chapter 3, Section 4.

equal pay provision prohibits discrimination only in direct money wages. The Employment Standards Act does not cover sex-based differences in deferred or indirect remuneration in the form of pension and other employee benefits. Hence, even where men and women are performing substantially the same work, they may receive different "fringe" benefits. As currently worded, therefore, the equal pay provision of The Employment Standards Act does not fulfil the intent of I.L.O. Convention 100, which calls for equal remuneration as distinct from equal pay. (2a)

In 1963, the Ontario government established a Women's Bureau in the Ministry of Labour, in response to the increasing labour force activity of women. Discrimination in employment on the basis of sex in areas other than wages was first prohibited under the Women's Equal Employment Opportunity Act of 1970; which also banned discrimination on the basis of marital status. This Act applied to specific employment areas, such as hiring and promotion, but it did not extend to the area of terms and conditions of employment. In the interest of effectiveness, the Women's Equal Employment Opportunity Act was intentionally drafted to cover particular areas of discrimination, with the understanding that the coverage of the Act would be extended as the need became apparent. Throughout 1971 the Women's Bureau, which administered this legislation, received an increasing number of inquiries and complaints concerning sex-based differences in employee benefit programs.

Although the original Human Rights Code has been revised several times since its introduction in 1962, the tenth anniversary of its proclamation was chosen as the appropriate time for a series of major amendments. In addition to several changes designed to increase the effectiveness of the Code, its coverage was broadened substantially by the absorption of both the Age Discrimination Act and the Women's Equal Employment Opportunity Act. In view of the increasing concern about employee benefit differentials based on sex, marital status and age, the exemptions that had applied to this area of employment discrimination were repealed. So in June 1972, Section 4(1)(g) of the new Human Rights Code was expanded to prohibit discrimination against employees with regard to any term or conditions of employment, because of their sex, marital status or age. However, a special provision was added to the amendments to provide for delayed proclamation; Section 4(1)(g) "does not apply to any bona fide superannuation or pension fund or plan or any bona fide insurance plan that provides life, accident, sickness or disability insurance or benefits that discriminate against an employee because of age, sex or marital status until a day to be named by the Lieutenant Governor by her proclamation". (3)

2a. International Labour Office, an agency of the United Nations Convention Concerning Equal Remuneration for Men and Women Workers for Work of Equal Value, 1951 (No. 100). Ratified by Canada on November 16, 1972. Article 1 states that, "For the purpose of this Convention, the term 'remuneration' includes the ordinary, basic or minimum wage or salary and any additional emoluments whatsoever payable directly or indirectly, whether in cash or in kind, by the employer to the worker and arising out of the worker's employment."

3. Statutes of Ontario 1972, Chapter 119, Section 16.

B. THE BACKGROUND

The extension of human rights legislation to prohibit discrimination on the basis of sex, marital status, and age in the area of employee benefits marks government's response to significant social changes both in individuals' work patterns and in methods of remuneration.

As the term "fringe" benefits implies, pensions and welfare schemes were originally a relatively minor part of remuneration for employment, but the importance of employee benefits has increased dramatically in recent years. The latest survey by the Thorne Group Ltd. found that fringe benefit costs for employers increased from 27.9 to 29.0 per cent of gross payroll between 1969 and 1971.(4) Private pension plans accounted for 3.9 per cent of gross payroll in 1971 while welfare benefits (5) made up 5.4 per cent of gross payroll. Hence, the type of benefits studied by the Task Force make up approximately 9 per cent of gross payroll, at an average cost to the employer of nearly $800.00 per employee per year. In view of these data, it is clear that the term "fringe" benefits is a misnomer today and it follows that, as the significance of employee benefits increases, concern about their equity will correspondingly increase.

The enactment of Section 4 (1) (g) of the Code also represents a response to the increasing labour force activity of women with its related effect on the composition of family income. The basic concepts underlying employee benefit design were developed at a time when it was generally true to say that the husband was the "breadwinner" in the sense that he was the sole or major wage-earner for the urban family. At this time women were predominantly marginal, temporary employees and it was, quite reasonably, assumed that they did not need and were not interested in fringe benefit protection. An important employer objective of benefit plans is the reduction of staff turnover and, since women traditionally left the labour force at marriage, this employee retention value was considered irrelevant to female employees. This context in which the early plans were designed has changed during the post-war period.

In 1951 there were only 445,497 women in Ontario's labour force, and they made up less than a quarter of the province's work force (23.6 per cent of the total). Married women accounted for only 37.8 per cent of the total female labour force. The pattern of leaving the labour force at marriage is demonstrated by the fact that only 15.0 per cent of all married women were members of the labour force in 1951, compared to 26.5 per cent of all women of working age. (6)

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4. The Thorne Group Ltd., Management Consultants Fringe Benefit Costs in Canada 1971, Toronto, 1972

5. Welfare includes Group Life, Medical Insurance, Non-Occupational Sickness and Accident, Industrial Injury Benefits, Survivor Benefits

6. Dominion Bureau of Statistics. 1961 Census of Canada. General Review: The Canadian Labour Force Bulletin 7.1 - 12, Ottawa, 1967

In marked contrast to this 1951 data, the results of the 1971 Census indicate the increasing attachment of women to the labour force. In 1971, there were 1,232,825 women workers and they made up 36.1 per cent of the province's labour force. Married women are now in the majority among working women, making up 63.5 per cent of the total female labour force. Correspondingly, the gap between the labour force participation rate of married and of all women has narrowed to 43.0 and 44.3 respectively. (7)

In spite of the increasing labour force activity of married women, it should not be overlooked that 38.7 per cent of all working women are self-supporting because they are either single, widowed, divorced, or separated. (8) Income maintenance and similar plans are of obvious importance to these women and their dependents.

Even though most married women are not primary breadwinners, their earnings frequently constitute an important part of their families' overall budget. From her analysis of 1961 income data, Jenny Podoluk found that only 43.4 per cent of families depended upon one income. (9) Further,

> "statistics from sample surveys indicate that the proportion of families dependent upon one income declined over the preceding decade, attributable perhaps to the growing labour force participation of married women. The same statistics show that wives appeared to have replaced children as the most important secondary contributors to family income." (10)

The contribution of wives' earnings has a stronger impact at the lower income levels, where their labour force participation shifts many families into middle-income brackets.

This trend towards two-income earners, or dual-career families has significance for benefit plans that are designed to meet the income maintenance needs of the "traditional" one-income earner family. As more spouses share the economic responsibility for their standard of living, the concept of dependence in relation to marital status has become modified, but there has been a time-lag in the adaptation of employee benefit design.

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7. Statistics Canada, Information: 1971 Census Labour Force Data, Ottawa, November 1973

8. Statistics Canada. The Labour Force, catalogue no. 71-001, Ottawa, annual average 1972

9. Jenny R. Podoluk. Incomes of Canadians 1961 Census Monograph, Dominion Bureau of Statistics, Ottawa, 1968

10. Ibid pg. 126

Another social development that is relevant to the review of benefit differentials is the marked decline in the labour force activity of older workers, particularly men of 65 years and over. Between 1951 and 1971 their labour force participation rate fell from 39.5 (11) to 23.6 (12). Part of this decrease can be attributed to the declining importance of agriculture and self-employment, which are typified by late retirement. Ostry and Zaidi attribute a significant role to institutional factors: "The extension of private and public pensions and old age assistance, and the implementation of compulsory retirement by many companies, have been responsible for the labour-force withdrawal of many older men." (13). A question confronting the members of the Task Force is the extent to which this should be regarded as a beneficial trend.

Employees who can anticipate high pension levels may be prepared, even willing, to leave the labour force. For example, the recent extension of a "30 year and out" pension to Canadian members of the United Automobile Workers is qualified by a condition that, "the pension plan contains provisions for assuring that the employee retiring after thirty years of service will, in fact, leave the labour force." (14). These social and institutional pressures towards early retirement may conflict with the needs and desires of those older workers who have been unable to accumulate either substantial pension benefits or private assets.

In reviewing these social changes, we conclude that many of the differentials in pensions and other benefits stem from inertia, and a resulting failure to respond to the changing life-styles and needs of the work force. The environment in which the early plans were designed has changed, but their underlying assumptions, based on certain stereotypes, have not been adjusted accordingly. We hope, therefore, that the implementation of Part X will go beyond the redress of individual inequities by increasing the social relevance of employee benefit design and philosophy.

C. THE APPROACH

The Task Force on Section 4(1)(g) of the Ontario Human Rights Code was appointed by Order-in-Council on January 31, 1973. (15) In view of the transfer of our statutory authority, we have re-named ourselves as the Task Force on Employee Benefits Under Part X of The Employment Standards Act. The rest of this Report will refer to Part X, rather than Section 4(1)(g), where appropriate. Because of the significant and complex effects that this provision might have on pension and insurance plans, we were authorized to examine and report upon the anticipated impact of bringing the pro-

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12. Statistics Canada, Information: 1971 Census Labour Data, Ottawa, November 1973

13. Ostry and Zaidi ... op. cit., page 27

14. Canada Department of National Revenue. News Release. November 22, 1973

15. Order-in-Council number Oc-325/73

visions of Part X into force. In announcing our appointment, the Honourable Fern Guindon, then Minister of Labour for the Province of Ontario stated that, "In order to avoid dislocation of existing plans and benefits, the enactment of the provision was deferred to allow employers time to adjust their benefit programs and to permit the Ministry of Labour to review and assess, with interested parties, the practical problems which may need further consideration." (16)

Given this broad mandate, we began our deliberations by reviewing legislation and policy in other jurisdictions, in an attempt to identify relevant precedents. The review in Chapter Three indicates that, apart from the United States there was little guidance available elsewhere. After we completed our legislative review, the New Brunswick Human Rights Commission issued detailed guidelines which have assisted greatly in putting our recommendations into perspective. (17)

During this initial information-gathering stage, we considered whether or not it would be advisable to conduct a survey, in order to assess the extent of practices which came within our mandate. An extensive research project was rejected for the following reasons. Firstly, Statistics Canada and The Pension Commission of Ontario were able to provide a comprehensive picture of pension-plan provisions and trends. Secondly, the rest of the benefits area is so heterogeneous and changing, that a survey would have added little additional information, from a cost-benefit point-of-view. We did however commission an analysis of negotiated employee benefit programs, which was undertaken by the Research Branch of the Ministry of Labour. The study looked at non-construction settlements covering 200 employees or more which had been negotiated in 1971 and 1972, and which contained or changed differentials based on sex or marital status. The main conclusion we drew from this study was that sex-based differentials are very rare in negotiated benefit programs, and differences based on marital status are even more unusual. There was also a marked trend towards the elimination of differentials. These findings confirmed our impression that the enactment of Part X will be consistent with the existing momentum to equalize employee benefit provisions.

Early in February 1973, we approached known interested parties for submissions; and advertisements were placed in the newspapers in order to encourage individual briefs. In response to this initiative, we received 56 submissions. (18) After the analysis of these submission, 19 of the associations and individuals who wrote to us were invited to meet with the members of the Task Force for in-depth discussion of the issues that had been raised. A series

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16. Ontario Ministry of Labour, News Release, February 7, 1973

17. See Appendix IIIB

18. See Appendix I - for list of submissions

of meetings were held during May and June, 1973, and they provided us with valuable feed-back concerning the views of employers, labour and employee organizations, and insurance carriers and consultants. The key issues that emerged are reviewed in Chapter Four.

When the problem-areas had been identified, we divided into subcommittees during the summer. The subcommittees studied and made recommendations in the areas of pension plans, life insurance plans, and health and accident insurance programs. We reconvened in September 1973, when we began to develop final recommendations according to the three grounds of the Code, i.e. sex, marital status and age. Several meetings were also held in relation to some administrative issues.

The Interim Report of the Task Force was released on October 24, 1974, together with a 17-page summary. Our original recommendations generated some controversy, so we are confident that the resulting discussion has alerted all interested parties to the implications of Part X. Written responses to the Interim Report were invited, and we received a total of 37 submissions. (19). We also received informal feedback from conferences, meetings, and telephone inquiries. We gave careful consideration to all suggestions, and this Final Report incorporates several ideas for clarification and/or modification.

While these responses were being analyzed and considered, the Minister of Labour decided to take action on three of the recommendations contained in the Interim Report. Amendments were introduced as part of Bill 134 on November 7, 1974. (20). These amendments provided for:-

1. Transfer of the administration of Section 4(1)(g) of the Human Rights Code by the Ontario Human Rights Commission to the Employment Standards Branch. (Recommendation number 83 of the Interim Report.)

2. Re-definition of employee benefits to include voluntary, as well as compulsory plans or features of plans. (Recommendation number 1 of the Interim Report.)

3. Introduction of regulatory authority under Section 34(5). (Regulations will be necessary to implement most of the recommendations of the Interim Report.)

Bill 134 received royal assent on December 23, 1974, and Part X becomes effective on a day to be named by the Lieutenant Governor in her proclamation. The proposed effective date of April 1, 1975, has had to be postponed.

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19. See Appendix I.

20. Bill 134: The Employment Standards Act, 1974, Part X - See Appendix V, for the text of Part X.

In working out our recommendations we found it necessary to strike a working balance between theory and practice. We realized that the basic principles that we had established could not be applied in a rigidly uniform manner to every feature of each type of benefit program. In some cases the appeal of consistency had to give way to the reality of administration. These exceptions were made reluctantly, after careful deliberation; and they partly explain why this is a complex and detailed report. Readers who are unfamiliar with the technicalities of pension and benefit design are directed to Chapter Two, which provides the general context to which the substantive recommendations can be related. In addition, the Glossary provides definitions of the unfamiliar and technical terms used in this Report.

The issues that we considered are inherently contentious and, since the members of the Task Force were selected to represent a broad range of views and experiences, it is understandable that we were unable to achieve complete consensus in all of our decisions. The present report represents the majority opinion, rather than the individual recommendations of each member.

We would like to take this opportunity of thanking the many people who provided assistance in the preparation of this Report, including the following:

Bonnie Acton, Wells Bentley, George Brown, Marianne Caley, Betty Deacon, Clarwyn De Souza, Patrick Flanagan, Robert Foster, Gordon Greenaway, Len Haywood, William Hussey, John Kinley, Noel Kinsella, Cheryl Kramsky, Ingrid Legall, Gail Menagh, Mary Molloy, Sonia Pressman-Fuentes, Deloris Stapleton, John Tarrel.

CHAPTER TWO

DISCUSSION OF THE PROVISIONS OF EXISTING EMPLOYEE BENEFIT PLANS RELATING TO AGE, SEX AND MARITAL STATUS

The aim of this chapter is to describe the provisions and terminology commonly found in employee benefit plans at the time this Task Force was appointed. (1) Particular attention has been paid to those provisions which have differentiated on the basis of age, sex, or marital status. The material in this chapter is of a descriptive nature only, and does not include recommendations for the continuation or the cessation of present practices - such recommendations are found in the later chapters of this report.

For the purposes of this chapter, an employee benefit plan is any formalized program established by an employer to provide pension benefits, life insurance benefits, disability income benefits, or sickness and accident insurance benefits for employees. This includes negotiated multiple-employer plans, such as those commonly found in the construction and garment industries, which are financed by contributions by the employers but administered by a board of trustees appointed by the employers and the union. It also includes a program established by an employer on a self-insured basis, such as a formal program for granting paid sick leave, which is communicated to the employees but is not financed through an insurance contract. Such self-insured plans have been included in this description of plan provisions even though, strictly speaking, they are not included in the Task Force terms of reference since they are already covered by Section 4 (1) (g) of the Code.

For purposes of this chapter, employee benefit plans have been divided into four categories:

1. Pension plans
2. Life insurance
3. Disability Income insurance
4. Health and Medical insurance

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1. In addition to the explanatory material in this chapter, readers are also referred to the Glossary for definitions of technical and unfamiliar terms.

Each of these categories has been dealt with separately. In each case, the benefits provided by statutory programs have been outlined briefly, then the main provisions commonly found in employer-sponsored plans have been described, with references made to any variations in the provisions on account of age, sex, or marital status.

Some employer-sponsored plans are integrated with the statutory plans, that is, the contributions and/or benefits under the employer-sponsored plan are adjusted to reflect the same items under the statutory plan. Other employer-sponsored plans are independent of the statutory plans. In this chapter, no distinction has been made between integrated and non-integrated plans.

APPROACHES TO COST-SHARING

Within each category of employee benefit plan, there are three ways in which the cost of the plan may be met:

1. The employer may pay the entire cost. This approach offers a number of advantages - no cost to employees, automatic coverage of all eligible employees, and simplicity of administration. Although many union-negotiated plans are on this employer-pay-all basis, it has not otherwise gained widespread acceptance among employers because of the costs involved.

2. The employees may pay the entire cost. This approach is best suited to the type of benefit plan in which there is no variation in cost by age or sex (e.g. O.H.I.P.). Where such variation exists (e.g. in life insurance), it is difficult to make an employee-pay-all plan attractive to all segments of the employee group. For example, if equal benefits are provided for all employees, and if each employee is required to pay for his own benefits, then the cost could be prohibitive for some employees. If the plan provides for equal benefits and equal contributions from all employees, then an employee-pay-all plan would not be attractive to low-cost employees,

since they would be required to subsidize the higher-cost employees. Accordingly, the employee-pay-all approach is generally restricted to voluntary additional features of plans, which an employee may elect as a supplement to the basic plan.

3. The employer and employees may share the cost. This is the most common approach. It has the advantage that it permits larger benefits than those that could be provided in an employer-pay-all plan, while it overcomes the major problem with the employee-pay-all plan, because the employer can absorb the actuarial cost differences which result from providing equal benefits to all employees, regardless of such factors as their age or sex, while maintaining fixed employee contributions.

There are a number of variations on each of the above approaches; that is, there may be different levels of employee and employer contributions for different groups of employees, or different approaches may be used by the same group for different types of benefit plan. These variations are discussed in the remainder of this chapter.

One approach to employee benefit plans which has attracted a great deal of discussion, but which has not yet been widely accepted, is the "cafeteria approach". Under this approach, an employer would provide each employee with a given benefit plan contribution, which the employee could allocate to the various types of benefits as he or she saw fit. The amount of each type of benefit which a given employee would receive would necessarily be determined on a money purchase basis; i.e. the amount of each benefit would be whatever could be purchased from the portion of the contribution allocated to that benefit by the employee, on the basis of actuarial cost factors corresponding to that employee's age and sex. The main advantage of this cafeteria approach is that each employee can tailor the benefit package to suit his or her own particular circumstances, taking into account such factors as state of health, nearness to

retirement, number of dependents, and other financial considerations. However, this approach suffers from the same drawbacks as the employee-pay-all approach, since a contribution level that produces adequate benefits on the average will not necessarily produce adequate benefits for the high-cost employees.

A. PENSION PLANS

Statutory Programs

The federal Old Age Security Act provides a pension to all persons aged 65 or over who have satisfied certain residence requirements (in most cases, this means they must have resided in Canada for the past 10 years). The basic amount of monthly pension is the same for all recipients However, a person who is receiving the basic pension may also be eligible to receive a guaranteed income supplement, the amount of which depends upon the pensioner's income and marital status. These pensions are financed from general taxation rather than from specified contributions by employees and employers.

The Canada Pension Plan, which came into effect in 1966, provides earnings-related pensions to all persons aged 65 and over who have contributed to it. The Plan applies to almost all workers in Canada (outside of Quebec which has its own plan) who are between the ages of 18 and 65. Required contributions by employees are 1.8% of earnings in excess of a basic exemption ($700 in 1975) up to a maximum yearly ceiling ($7,400 in 1975); the employer matches the employee contribution.

Although the formula for the pensions payable under the Canada Pension Plan is rather complicated, in most cases the amount of retirement pension payable to an employee who retires at age 65 will be equal to 25% of the average earnings on which he or she made contributions, adjusted for increases in the general earnings level from the date of contribution until the date of retirement. Retirement pensions in payment are adjusted annually to reflect increases in the Consumer Price Index after retirement.

In addition to the retirement benefit, the Canada Pension Plan also provides benefits under specified conditions to disabled workers, surviving spouses, orphans and children of disabled workers. These are described in later sections of this chapter.

The Pension Benefits Act of Ontario, which became effective in 1965, is a regulatory law governing private pension plans. Its purpose is to protect members of such plans from a loss of pension rights. This is accomplished by requiring that employees be given adequate information about the terms of the plan, by establishing minimum standards of solvency for pension plans, and by provisions requiring vesting of benefits and locking-in of employee contributions which are described later in this section. The Act is administered by the Pension Commission of Ontario. In order to ensure compliance with the Act, this Commission requires registration of all pension plans, annual information returns, an initial report on the plan costs, and reviews reports on costs at least once every three years.

All of the above legislation must be taken into consideration in the design of a pension plan. In addition, some of the plan provisions must satisfy the requirements of the Department of National Revenue in order that the plan be registered under the Income Tax Act.

PROVISIONS OF EMPLOYER-SPONSORED PLANS

1. Eligibility for Membership

This provision is used to define the categories of employees who may join the plan and the date at which they may join. In general, only full-time permanent employees are eligible to join the plan. Access may be restricted to certain well-defined groups, such as salaried employees only, hourly-rated employees only, or administrative staff only. A small number of plans provide that access is limited to members of one sex.

In many plans, a maximum age for admission is imposed. The purpose of this provision is generally to avoid the high costs of providing pensions to older workers, or to avoid providing an inadequate pension that may reflect badly on the plan.

Most pension plans include minimum age and/or service requirements which must be met before a new employee becomes eligible to join the plan. For example, an employee may be required to have completed 1 year of service and attained age 21 before he or she may join the plan. This provision is intended to avoid the inconvenience and expense of enrolling employees who may not stay long with the employer. Accordingly, the minimum requirements are generally set at a level determined by the turnover experience of the particular employer. In many cases, this has resulted in different eligibility requirements for males and females.

Participation in the plan by eligible employees may be voluntary, compulsory, or voluntary for a period of time after which the employee must join the plan. In some plans, the participation requirements are different for males and females. In a non-contributory plan, all eligible employees automatically participate in the plan.

2. Employee Contributions

Over three-quarters of the persons in Ontario who were members of pension plans in 1970 were in contributory plans, that is, plans in which contributions were required by employees as well as by the employer.

The amount of the required employee contributions is determined by a formula expressed as a percentage of earnings or as a flat amount such as 10 cents per hour or $5 per week. In most plans, the formula is the same for all covered employees regardless of their age or sex. However, there are a small number of plans in which the rate of employee contribution varies by sex, and some plans in which there are variations by age, either in the form of higher rates of employee contribution for persons who join the plan at the higher ages, or less often, in the form of employee contribution rates that increase as each employee's age increases.

In many plans the employees are allowed to make additional voluntary contributions in order to increase their benefits from the plan. Since these contributions are voluntary and are not matched in any fashion by the employer, there are generally no restrictions except for possibly a minimum imposed for administrative reasons and a maximum of the amount that is deductible for income tax purposes.

3. Employer Contributions

In a money purchase plan, the employer's contribution is determined by a formula expressed as a percentage of each employee's earnings or as a flat amount per employee. The formula may be uniform for all covered employees, or it may provide for varying rates of employer contribution depending upon such factors as the employee's sex, age at entry into the plan, or attained age at the time the contribution is made.

In a profit sharing pension plan, the employer's total contribution for all covered employees is related to the employer's profit for the year; for example, the employer's contribution may be 14 per cent of gross profit for the year. The total employer contribution is then allocated among the covered employees on the basis of a formula set out in the plan, which may contain variations by age or sex as in the case of the money purchase plan.

In both the money purchase plan and the profit sharing pension plan, the amount of contribution by the employee and the employer is defined by the terms of the plan, and the amount of benefit is the variable item; i.e. the amount of benefit is simply whatever can be purchased from the accumulation of those defined contributions with investment income. In a defined benefit plan, on the other hand, the plan text specifies the benefits to be provided for each covered employee and states that the employer will contribute the amount required, in addition to the employee contributions, if any, to pay for those specified benefits. In this case, the amount of the employer's contribution is determined

on an actuarial basis by applying to the benefit amounts for each employee factors based on assumed rates of interest, mortality, disability, turnover, and salary increase which are suitable for the employee's age and sex. While this process results in a cost for a given employee which is dependent upon the individual's age and sex, the results for all covered employees are totalled and may be averaged to arrive at a single rate for the group, such as 5 per cent of salary or 5 cents per hour; such average is recalculated from time to time as the composition of the group changes.

4. Retirement Date

All pension plans must include a formal definition of the date or dates at which it is possible for an employee to retire and collect a pension. According to the usual terminology, such dates are called retirement dates. Each plan text will define one or more of the following:

i) Normal Retirement Date - This is the date at which it is expected that most employees will retire, in accordance with the established practice of the employer, and receive the normal unreduced pension from the plan. The normal retirement date for a given employee is the date on which he or she has attained a specified age and, in some plans, completed a specified period of service with the employer. The requirements are frequently different for males and females.

ii) Compulsory Retirement Date - This is the date at which an employee must retire from the service of the employer. In many plans, the compulsory retirement date and the normal retirement date are the same. In others, employees may elect, with or without the employer's consent, to defer their retirement until after their normal retirement date but not beyond their compulsory retirement date.

iii) Early Retirement Date - Many plans provide that an employee may retire on a reduced pension before his or her normal retirement date. Such early retirement may be at the employee's option, at the employer's request, or by mutual consent. A minimum attained age and/or period of service may be required.

There is a trend toward including a provision in the plan for early retirement, at the employee's option, on an unreduced pension, subject to more stringent age and service requirements than those specified for a reduced early retirement pension. For example, a reduced early retirement pension may be available at age 55 with 10 years' service, while an unreduced early retirement pension is available at age 60 with 30 years' service.

d) Disability Retirement Date - Many pension plans, particularly in the public sector, provide that an employee who becomes totally disabled may retire before normal retirement date with an immediate pension. The earliest date at which an employee may so retire is the disability retirement date. A minimum age and/or period of service is generally specified.

As previously mentioned, the above definitions employ the standard pension terminology which refers to "retirement dates". In Chapter 7 of this report, the Task Force has deviated from the standard terminology by making a distinction between "retirement date" and "pensionable date". In that chapter, "retirement date" refers to the date of cessation of employment, while "pensionable date" refers to the date at which pension benefits become available under the plan. The purpose of the distinction is to facilitate the discussion of the principles applicable to situations in which the normal pensionable date differs from the compulsory retirement date.

5. Retirement Benefits

a Normal Retirement

Pension plans may be classified into two types depending upon the manner in which the normal retirement benefit is determined. On the one hand, there are the money purchase plans and profit sharing pension plans in which the amounts of contribution by the employee and the employer are defined by the plan and the amount of normal retirement benefit is

simply whatever can be purchased from the accumulation of those contributions with investment income. On the other hand, defined benefit plans provide normal retirement benefits according to a formula defined by the plan and the employer contribution is the variable item. The defined benefit may be expressed in terms of dollars or in terms of a percentage of the employee's earnings during a specified period of time such as the 10 years immediately preceding retirement or the 5 years during which the employee's earnings were highest. The benefit formula may be a unit benefit formula by which the employee earns a unit of pension for each year of service, or a flat benefit formula, in which case the pension is the same dollar amount or the same percentage of specified earnings for all employees who qualify for a normal retirement benefit.

The normal retirement benefit under a money purchase plan or profit sharing pension plan will vary according to the employee's sex, and his or her age at retirement. This is because the amount of monthly pension that can be purchased from a given amount of accumulated contributions depends upon the period of time during which the pensioner can be expected to survive and collect the pension. It is well established that, on the average, females can expect to live longer than males and young persons can expect to live longer than older persons. Schedules of premium rates for pensions have been designed to reflect these differences. A more detailed discussion of mortality differences by sex and age will be found in Chapter 4 of this report.

Under a defined benefit plan, the pension payable on normal retirement generally depends only on the employee's length of service and/or earnings. Variations in the formula to reflect differences in age or sex are not common.

b Postponed Retirement

There are three ways in which an employee's pension may be calculated if he or she defers retirement until after the normal retirement date but not, of course,

beyond the compulsory retirement date:

i) the pension may be the same monthly amount as the employee would have received if he or she had retired at the normal retirement date;

ii) the pension may be calculated as though the employee's actual retirement date were his or her normal retirement date (i.e. benefits continue to accrue after the normal retirement date);
or

iii) the pension may be initially calculated as in (i) but then increased on an actuarially equivalent basis to reflect the increased interest earnings of the plan and the reduced life expectancy of the pensioner - the factors used to determine the amount of increased pension may depend upon the age and sex of the pensioner.

c Early Retirement

The amount of pension payable on early retirement is generally determined by applying a reduction factor to the employee's accrued normal pension. The reduction factor may be calculated on an exact actuarially equivalent basis, taking into account the loss of interest earnings and longer expected payout period due to the early retirement, or it may be calculated on the basis of a uniform discount factor which approximates the actuarial equivalent (e.g. ½ per cent for each month by which the early retirement date precedes the normal retirement date). In the former case, the amount of early retirement pension will vary by age and sex. In the latter case, the discount factor is generally the same for males and females.

d Disability Retirement

The amount of pension payable on disability retirement is generally equal to the accrued normal or early retirement benefit, although there may be a minimum monthly amount. The remarks in (a) and (c) above apply equally well to disability benefits.

e Form of Pension

All pension plans provide that pensions will normally be paid in a specified form such as payments for life only, payments for life but guaranteed 60 months in any event, or payments for life with a reduced pension payable after the pensioner's death during the remaining lifetime of the pensioner's spouse. The normal form of pension may be the same for all employees or it may vary by sex and/or marital status; for example, the normal form of pension may include a survivor pension only for married males, with payments on the life only basis for all other employees.

In some plans, all pensions must be paid in the normal form, with no provision for optional alternatives. However, most plans provide that the retiring employee may choose the form of his or her pension from a list of options available. If an optional form is chosen, the amount of monthly pension is adjusted on an actuarially equivalent basis to reflect the difference in probable payout period between the normal form and the optional form. The degree of adjustment depends upon the age and sex of the pensioner and, where applicable, the age and sex of the pensioner's spouse.

6. Death Benefits Before Retirement

In a contributory pension plan, a death benefit before retirement is always provided in an amount not less than the total employee contributions, with or without interest. In some plans, all or a portion of the employer's contributions is also paid as a death benefit, with the portion depending upon such factors as the age and/or credited service of the employee.

Instead of these lump sum death benefits, some pension plans provide a monthly pension to the employee's surviving spouse and, in some cases, dependent children. The amount of such pension is generally related in some fashion to the amount of retirement income the employee

had accrued before the date of his or her death. Eligibility for survivor pensions is generally dependent upon the age and service of the employee, and often is available only to male employees. There are other common restrictions such as a minimum period during which the employee and his or her spouse must have been married, a requirement that they must have been living together at the date of death, or a requirement that the surviving spouse's pension will cease upon remarriage. In many plans, the amount of survivor pension depends upon the difference in age between the employee and his or her spouse; for example, the amount of survivor pension may be reduced by ½ per cent for each year by which the survivor is younger than the employee, or increased by ½ per cent for each year by which the survivor is older than the employee.

7. Termination Benefits

The benefits that may be provided to an employee on termination of employment are regulated by the Pension Benefits Act of Ontario which stipulates minimum standards for vesting of benefits and locking-in of employee contributions. The standards apply to every employee who terminates his or her employment after attaining age 45 and completing either 10 years service with the employer or 10 years membership in the plan, whichever comes first. A pension plan established prior to January 1, 1965, must provide that such an employee will receive a vested pension payable from his or her normal retirement date equal to the amount of pension earned between January 1, 1965 (the effective date of the Act) and the date of termination. Furthermore, the required contributions made by such an employee after January 1, 1965 are locked-in to the plan; that is, they may not be refunded to the employee as a lump sum termination benefit. Exceptions to these rules are permitted for vested pensions of less that $10 per month and for vested pensions payable to seriously disabled employees; in both cases, the commuted value of the vested pension may be paid in a lump sum to discharge the employee's rights under the plan. Another exception is a provision that a pension plan may allow a terminated employee to elect a lump sum payment of up to 25 per cent of the commuted value of the vested pension as a partial discharge of his or her rights under the

pension plan. In such cases, the other 75% must still be provided in the form of a vested deferred pension.

In a contributory plan, a terminating employee who is not subject to the above "45 and 10" rule is generally provided with a refund of his or her required employee contributions, with or without interest. Many plans provide a vested pension under conditions other than those imposed by the Pension Benefits Act of Ontario. The plan may provide that a terminating employee will receive a vested pension payable from normal retirement date in an amount related to his or her accrued retirement pension at the date of termination according to a schedule related to the employee's age and service. For example, the vested portion of an employee's accrued retirement pension may be 10% after completion of 5 years' service and attainment of age 30, increasing by 10% each year thereafter to a maximum of 100% after 15 years' service, subject to the overriding provisions of the Pension Benefits Act. The employee is often given the choice of a vested pension or a refund of employee contributions with interest, provided that the employee contributions are not locked in by the Act.

B. LIFE INSURANCE

Statutory Programs

While there is no statutory life insurance program as such, there are death benefits payable under both the Canada Pension Plan and the Workmen's Compensation Act of Ontario.

The Canada Pension Plan provides a lump sum benefit, on the death of a contributor, in an amount which is related to the contributor's earnings but cannot be more than $660 in 1974. In addition, a surviving spouse's pension is payable on the death of a contributor if the surviving spouse is then aged 45 or over, or is disabled, or has dependent children. A reduced surviving spouse's pension is payable to surviving spouses who are aged 35 or over and who do not qualify, or who cease to qualify, for an unreduced surviving spouse's pension. On the death of a contributor with dependent children, an orphan's pension is payable. (2). These survivor benefits cease in the event of remarriage.

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2. Since January 1, 1975, the same benefits have become available to both male and female contributors to the Canada Pension Plan for their survivors and dependent children. Before this change, the survivors and dependent children of female contributors were not eligible for the same benefits as those of male contributors.

Lump sum death benefits, surviving spouses' pensions and orphan's pensions are now payable under the Workmen's Compensation Act in the event of death of an employee through employment-related causes.

Provisions of Employer-Sponsored Plans

1. Eligibility for Membership

Life insurance is generally available through a group contract to all full-time permanent employees who have completed a short probationary period of service with the employer such as 3 months. Participation in the plan by eligible employees is usually compulsory. In some instances, the eligibility and participation rules are different for males and females.

2. Employee Contributions

The amount of employee contribution, where required, is expressed as a given rate per $1,000 of insurance coverage. The rate is usually the same for all employees regardless of age or sex, but it might be graded according to the employee's attained age, particularly in a plan in which the employee had an option as to the amount of his or her insurance coverage.

3. Employer Contributions

The employer contribution is equal to the difference between the premium charged by the insurance company and the employee contribution. The premium rate for a given employer is generally expressed as a flat amount per $1,000 insurance coverage, with the level of that flat amount determined on the basis of the distribution of the employees by age, sex and amount of insurance, the size of the group, and possibly other factors such as industry or geographical area. An employer's premium rate is re-calculated annually to reflect changes in the composition of the group and, in the larger plans, the group's actual claims experience.

4. Lump Sum Death Benefits

In most group life insurance plans, the benefit payable on death is a lump sum determined according to a specified schedule. The death benefit may be expressed as a flat amount, a multiple of the employee's earnings, or, less often, an amount related to the employee's length of service. In some plans, each employee is insured for a basic amount and has the option of electing additional amounts according to specified rules which are designed primarily to guard against excess losses in respect of persons in poor health.

It is common practice to include separate schedules for males and females, or for heads of households and others. Variation in the amount of benefit by age is also common.

5. Survivor Benefits

A group life insurance plan may provide a monthly income benefit to an employee's surviving spouse and, in some cases, dependent children, instead of or in addition to a lump sum death benefit. For example, the plan may provide a monthly income equal to 30 per cent of the employee's monthly earnings, payable as long as the employee's spouse survives or until each of the employee's children attain age 21, if later. Instead of monthly payments for life, the plan may provide that payments continue for a fixed period such as 5 years or until age 65. In many plans, the monthly income ceases in the event of remarriage - in such a case, some plans provide for a large lump sum payment (e.g. an amount equal to 24 months' income).

It is common practice to restrict this type of benefit to married males or heads of households.

6. Disability Benefits

In addition to benefits payable on death, many group life insurance plans provide benefits in the event that an employee becomes totally and permanently disabled. In some plans, premium payments by the employee and employer are waived during the period of disability and life insurance coverage remains in force. Other

plans provide that where the total disability is deemed to be permanent, the amount of life insurance benefit is paid to the employee in instalments, generally over 60 months, with any unpaid balance becoming payable on the employee's death.

Most plans which include such disability benefits provide them only if the employee becomes disabled before age 60.

7. Dependent Insurance

A small but growing number of plans provide insurance on the lives of an employee's dependents, with the employee being the beneficiary. The amounts of insurance are generally small. This benefit may be included as part of the basic plan or may be available on an optional basis, in which case the employer may or may not contribute toward the additional cost. The definition of dependent may be such that this benefit is only available to male employees or to heads of households.

C. DISABILITY INCOME INSURANCE

The basic purpose of disability income insurance is to protect an employee from the loss of income resulting from disability caused by accident or sickness. The most common plans are short-term disability plans which are designed to cover those injuries or illnesses from which it is expected that the employee will recover and return to work. Less common are long-term disability plans which cover the less frequent but more severe long term disabilities.

Statutory Programs

Short-term disability benefits are provided under the federal Unemployment Insurance Act. In order to qualify for the disability income benefit, an employee must have been employed in at least 20 of the 52 weeks preceding the onset of disability. The weekly benefit is normally 2/3 of the employee's weekly income, regardless of whether he or she has any dependents, with a minimum benefit of $20 per week and a maximum of $113.33 per week in 1974. However, for an employee who has a dependent and whose earnings are very low, the benefit may be as high as 75 per cent of his or her weekly income. Benefits commence in the third week of disability

and continue for up to 15 weeks. Pregnancy benefits are payable for up to 9 weeks pre-natal and 6 weeks post-natal leave. (3).

The benefits provided under the Unemployment Insurance Act, including both unemployment and sickness benefits, are financed by contributions from employees (to a maximum 1974 contribution of $123.76) and employers (1974 maximum of $173.26 per employee).

The Ontario Workmen's Compensation Act provides protection against loss of income due to employment-related illness or injury. For cases of total disability, the benefit is 75 per cent of the employee's average weekly earnings, subject to a minimum benefit of $55 per week and a maximum of $144 per week. The benefits are financed entirely by contributions from employers at rates that vary by industry. There are no employee contributions.

The Canada Pension Plan provides long-term disability benefits to persons who have contributed to the C.P.P. for at least a minimum number of years (in most cases, this means the last 5 years) and who are suffering from a severe and prolonged disability. Monthly benefits commence in the fourth month following the month in which the person became disabled, and are payable until the person recovers, reaches age 65, or dies. The amount of monthly benefit is a flat amount of $33.76 (in 1974) plus 75 per cent of the person's retirement pension; the maximum benefit payable for disabilities incurred in 1974 is about $125 per month.

The ways in which the above statutory programs are inter-related, and the relationships and interactions among them and between them and the employer-sponsored plans, are varied and complex. However, as they have no bearing on the issues at hand, they will not be described here.

Provisions of Insured Employer-Sponsored Plans

1. Eligibility for Membership

The eligibility conditions for membership in short-term disability plans are similar to those for group life insurance plans; that is, all full-time permanent

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3. The Unemployment Insurance Commission has announced that the 15-week pregnancy benefit period will become flexible in the future, i.e. employees who choose to take a shorter pre-natal leave will be eligible for longer post-natal leave benefits up to a total of 15 weeks.

employees are generally eligible after completion of a short probationary period of service and participation is usually compulsory. There may be different plans for different categories of employees, such as salaried and hourly-rated.

Because long-term disability plans are relatively new and potentially expensive, eligibility for membership in such plans is often restricted to salaried employees who have completed a substantial period of service such as 5 years. The plan may also be restricted to employees who have not yet attained a specified age, or to males only.

2. Employee Contributions

Where employee contributions are required, they may be expressed as a fixed amount per employee, a percentage of earnings, or a given amount per $10 weekly benefit. Variations in the rate by age or sex are not common.

3. Employer Contributions

As in the case of group life insurance, the employer contribution is equal to the difference between the premium charged by the insurance company and the employee contribution. The premium rate per unit of benefit for a given employer is determined by the insurance company on the basis of factors similar to those used in the determination of premium rates for group life insurance. Such factors depend upon the age and sex of the individual employees, but are averaged over the entire group in determining the employer's rate.

4. Disability Income Benefits

The benefits payable to a disabled employee are determined according to a schedule which specifies the amount of weekly or monthly benefit, expressed as a percentage of earnings or as a flat amount for all employees, and the dates at which the benefit payments begin and end. Variations in the schedule by age, sex, or marital status are not common.

Many disability income plans do not provide any benefits for absences from work due to pregnancy-related causes, while other plans provide benefits for absences due to pregnancy complications but not for the normal pregnancy leave of absence.

Non-Insured Sick Leave Plans

Instead of insured short-term disability plans, many employers have established formal sick leave plans that are not insured by a contract with an insurance company. The benefit payable under such plans is usually full pay for a given number of days, or full pay for an initial period followed by half pay for a subsequent period. The length of time during which benefits are payable is generally dependent upon the employee's length of service, but may also vary according to such factors as sex or head of household criteria. In a cumulative sick leave plan, some or all days of sick leave not used in one year may be carried forward and used in a subsequent year; in a non-cumulative plan, there is no such carry-over.

Most sick leave plans are financed by the employer out of current payroll, although for other plans a trust fund is established to provide the benefits, with contributions to the trust fund by the employer and/or employees on the basis of a fixed amount per employee or a percentage of earnings.

As in the insured disability income plans, benefits may or may not be payable for absences from work due to pregnancy-related causes.

HEALTH AND MEDICAL INSURANCE

Statutory Program

Since 1972, the only insurance plan which can provide basic hospital and medical insurance in Ontario has been the Ontario Health Insurance Plan (OHIP). This plan pays 90% of the Ontario Medical Association's Schedule of Fees for all required physicians' services, the full cost of most

hospital services including standard ward accommodation, and part or all of the cost of other health care items such as ambulance services, emergency dental care, and eye examinations.

OHIP premiums are $11.00 per month for a single person and $22.00 per month for a family (two or more persons). Most Ontario residents are covered for OHIP on a group basis through an employer. The OHIP premium may be paid entirely by the employee or the employer, or it may be shared between them in some fashion.

It should be noted that there is an established procedure by which either spouse may assume responsibility for paying the family OHIP premiums, with the other spouse being declared as a dependent and therefore exempt from coverage under his or her own employer's OHIP plan. However, many employers vary the level of their OHIP contribution according to sex or head-of-household criteria; for example, the employer sometimes contributes 50% of the family premium for married males, but only 50% of the single premium for married females.

Employer Sponsored Programs

Private health insurance plans provide benefits not covered by OHIP.

These fall into two major categories:

i) extended health insurance, which covers such items as hospital charges for semi-private accommodation (above the basic ward charge), private nursing, hearing aids, prescription drugs, etc.

and

ii) dental insurance.

All full-time permanent employees generally become eligible for membership and must join the extended health insurance plan after a short probationary period of service. One common exception to this rule has to do with the eligibility requirements for married women employees. Some plans do not cover them at all. Others exclude married women employees who are covered as dependents under their husband's group insurance plan. The trend is toward plans which include married women

employees, but which have a provision which is intended to avoid double reimbursement when a person is covered as an employee under one plan and as a dependent under another.

The premium structure used by insurance companies for extended health insurance is the same as that used by OHIP - one rate for a single person, another rate for a family. As in the case of OHIP, there is a great deal of variation in the methods by which the premium is shared between the employee and employer; that is, it may be paid entirely by the employee or the employer, or it may be shared beween them in some fashion, which may or may not vary by sex, marital status, or head-of-household criteria.

Extended health insurance plans vary in their treatment of expenses arising out of pregnancy. While some plans exclude all such expenses, the trend is toward plans which include pregnancy-related expenses, which is the practice followed by OHIP.

CHAPTER THREE:

THE DEVELOPMENT OF LEGISLATION AND POLICY OUTSIDE ONTARIO

A. CANADIAN JURISDICTIONS

In recent years, most of the human rights legislation in Canada has been amended to include prohibitions against employment discrimination on the basis of sex; and some statutes also cover discrimination on the basis of marital status and/or age. Unless otherwise stated, the following review summarizes the status quo effective January 1st, 1974. (1) This whole area of legislation is subject to rapid change, so that this review may not be up-to-date, at the time of publication.

FEDERAL (March 1975)

Under the constitutional division of areas of jurisdiction as set out in The British North America Act, the provinces have primary jurisdiction in the area of labour legislation. Thus, although Federal statutes such as the Canada Pension Plan and The Unemployment Insurance Act are universal in their application to Canadian employees, most Federal labour statutes apply only to employees in particular industries. For example, chartered banks, interprovincial transportation, and communications come under Federal labour laws.

In 1972, the Federal Government proposed amendments to the Canada Labour Code that would include sex and marital status, as well as age, as prohibited areas of employment discrimination. Excluded from the prohibition of discrimination on grounds of sex and marital status would be conditions applying to any superannuation or pension fund or plan; or any insurance plan that provides life, accident, sickness or disability insurance benefits.

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1. Some provinces submitted revisions to this Chapter in March 1975, and this is noted in the headings.

2. Bill C-206 an Act to Amend the Canada Labour Code and the Public Service Employment Act, first reading May 10, 1972.

These amendments did not go forward to second reading of the Bill and on December 10, 1973, the Minister of Justice announced Cabinet approval for a new federal Commission on Human Rights and Interests. The legislation establishing the new Commission will include the provisions that were originally intended for the Labour Code. The Minister of Labour has subsequently announced that the previous exemption of employee benefit plans will be removed.

Until January 1st, 1975, the Canada Pension Plan provided automatic widows' benefits, but only dependent widowers' benefits. Survivor benefits for male and female contributors have now been equalized. (2a)

British Columbia

The Human Rights Code of British Columbia Act (3) will prohibit discrimination "in respect of employment or a condition of employment" on the basis of sex, marital status, or age. Bona fide pension and insurance plans will be exempted from the ban on age-based discrimination. To date, no guidelines or regulations have been issued in anticipation of the interpretation of this amendment.

Alberta (March 1975)

Section 6(1)(b) of the Individual's Rights Protection Act of Alberta stipulates that: "No employer or person acting on behalf of an employer shall.....discriminate against any person with regard to employment or any term or condition of employment.....because of the.....sex, marital status, age... of that person or of any other persons." (4) Terms and

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2a. Bill 22, an Act to Amend the Canada Pension Act.

3. Passed on November 7th, 1973 - not proclaimed in effect. Bill No. 100, Section 8.

4. This Act was proclaimed in force January 1st, 1973. Prior to that, amendments to The Human Rights Act, effective July 1st, 1971, covered the same area.

conditions of employment have been interpreted to include pension plans and employee benefit programs.

Although no guidelines or regulations have been formulated in this area, we understand that the Alberta Human Rights Commission has settled several complaints involving sex-based differences in employee insurance schemes. In addition, the Commission has informally settled a number of differential retirement age cases. In Alberta, age is defined as 45 to 65.

Saskatchewan (March 1975)

The Fair Employment Practices Act of Saskatchewan was amended in 1972 to include a prohibition of sex-based discrimination in employment or "any terms or conditions of employment" (5). Neither age nor marital status are included as prohibited bases for discrimination in their legislation. Information bulletins to employers and trade unions draw attention to the possibility of violations if fringe benefits differ according to sex. (See Appendix III for a copy of the information bulletins).

We understand that about twelve individual complaints have been handled in this area, including the following two complaints:

(i) A collective agreement in the meat-packing industry contained higher levels of life insurance coverage and weekly sick pay benefits for male than for female employees. In addition married women were not eligible for the same reimbursement of drug costs as were married men.

(ii) The Government's life insurance plan provided a death benefit to be paid to any male employee on the death of his wife that was not available to a female employee in the event of her husband's death.

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5. The Fair Employment Practices Act, 1965, Chapter 293, as amended by An Act to amend The Fair Employment Practices Act, 1972, Chapter 43, Section 3. Proclaimed effective November 1st, 1972.

The Saskatchewan Human Rights Commission has also assisted in a study by the Saskatoon Business and Professional Women's Club, which surveyed approximately 200 employers in the province.

Manitoba

The Human Rights Act of Manitoba does not cover employment discrimination on the basis of age or marital status, but it does prohibit discrimination with regard to "employment or any term or condition of employment" because of sex. (6)

Manitoba is unique among Canadian jurisdictions in that their human rights legislation also prohibits sex-based discrimination in any contract that is offered to the public generally. (7) We understand that no complaints regarding individual insurance policies have, as yet, been filed under this provison.

With regard to employee benefits, however, the Manitoba Human Rights Commission has issued an information bulletin that lists common distinctions on the basis of sex that are considered contrary to their legislation. (See Appendix III for the text of the bulletin). We understand that the Commission has handled several complaints in this area, including a public hearing involving sex-based differences in sick pay benefits under a collective agreement in the meat-packing industry.

Quebec (March 1975)

The Employment Discrimination Act, 1964, prohibited discrimination in employment on grounds of sex, but we are unaware of any activity with regard to employee benefits under this statute. Bill 50, An Act Respecting Human Rights and Freedoms has recently been introduced and has received first reading. This Bill would prohibit sex-based discrimination in any conditions of employment, but it does not include any reference to age or marital status.

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6. The Human Rights Act, 1970, Chapter H 175 of the Continuing Consolidation of the Statutes of Manitoba, Section 4(1). Effective ...

7. Section 6.

New Brunswick

The Human Rights Act of New Brunswick has prohibited discrimination on the basis of sex in "terms and conditions of employment" since 1971. An amendment proclaimed December 10th, 1973, added marital status and age to this provision. (8) The application of this provision is qualified on the basis of age in respect of bona fide pension and insurance plans. Following a special study, and consultation with representatives of management, labour and the insurance industry, the New Brunswick Human Rights Commission has issued comprehensive guidelines concerning discrimination on the grounds of sex and marital status in employee benefit programs. (See Appendix III for the full text of the guidelines). We understand that there have not, as yet, been any complaints pursuant to the publication of these guidelines.

Nova Scotia

The Nova Scotia Human Rights Act does not, at present, deal with discrimination on the basis of either marital status or age; although it does provide that, "No person shall deny to, or discriminate against, an individual or class of individuals, because of the sex of the individual or class of individual in providing or refusing to provide...conditions of employment". (9)

The Nova Scotia Human Rights Commission has not so far issued any guidelines nor received any formal complaints relating to employee benefits, although we understand that this amendment is interpreted as including pension plans and employee benefit plans. We further understand that the Nova Scotia Commission has instigated some informal inquiries into this matter.

Prince Edward Island

The Human Rights Code, 1968, does not prohibit employment discrimination on the basis of sex, marital status or age. We understand that their equal pay provisions apply only to money-wages, and not to sex-based differentials in fringe benefits.

Newfoundland (March 1975)

The Newfoundland Human Rights Code prohibits an employer, or person acting on behalf of an employer from discriminating

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8. The Human Rights Code of New Brunswick, 1971, Section 3(1), Proclaimed October 1, 1971.

9. Human Rights Act, Chapter II, Statutes of Nova Scotia, 1969 as amended by 1972, Chapter 65, Section 11A. Effective September 1, 1972.

"against any person in regard to employment or any term or condition of employment because of: that person's ...sex, marital status, or ...age". (10) Age is defined as between 19 and 65. However, this provision does not apply to the operation of bona fide retirement or pension plans or group or employee insurance plans. (11)

Northwest Territories

Amendments have been made to the Fair Practices Ordinance of the Northwest Territories that prohibit discrimination on the basis of sex and marital status, but not age, in "any term or condition of employment". (12) Since the amendment came into effect only on April 1st, 1974, there has been no practical experience with regard to its application to employee benefits.

B. THE UNITED STATES OF AMERICA

In the United States, the labour jurisdiction of the federal government is much broader than in Canada, where only about seven per cent of all employees come under federal labour laws. (13) Hence, the application of their State human rights laws is quite limited; and the States tend to follow the precedents established by the federal government. In view of this broad coverage, the members of the Task Force restricted their review of legislation in the United States to federal law and policy.

The United States have pioneered the removal of sex-based discrimination in the area of pension plans and other employee benefit programs. Their equal opportunity legislation does not cover discrimination on the basis of marital status, however; and their treatment of age-based discrimination is modified in its application to pension and benefit plans.

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10. The Newfoundland Human Rights Code, 1974, Section 9(1).

11. Section 9(5)

12. An Ordinance to Amend the Fair Practices Ordinance, 1966 (2nd), C.5, Section 2

13. In Canada, in October 1972, it is estimated that 555,000 out of a total of 8,328,000 employees worked under the federal labour jurisdiction.

Sex Discrimination

Title VII of the Civil Rights Act of 1964 includes a prohibition of discrimination in "compensation, terms, conditions, or privileges of employment" because of an individual's sex; (14) but it was not until 1968 that the Equal Employment Opportunity Commission (E.E.O.C.) formulated interpretive regulations. These regulations applied only to pension plans, where sex-based differences in optional or compulsory retirement ages were explicitly banned, while other differentials were left to Commission decision on a case-by-case basis. (15) Since then, the E.E.O.C. has issued several decisions concerning individual cases of sex-based differentials under pension plans, group health insurance plans, and sick benefit plans.

In 1972, this case-by-case approach was replaced by comprehensive guidelines covering all forms of "fringe benefits" (see Appendix II for full text). The new guidelines introduced the following significant principles:

a Benefits shall not be made conditional upon "head-of-household" or "principal wage-earner" criteria

The E.E.O.C. originally found primary breadwinner tests acceptable so long as they were consistently administered to both male and female employees. The new policy follows the precedent set in the Griggs v. Duke Power Company case (16) whereby neutral employment practices that by their operation

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14. Section 703 (a) (1) C.C.H. Employment Practices Guide #3051

15. E.E.O.C. Guidelines on Discrimination Because of Sex Washington, D.C., September 1969
"a) A difference in optional or compulsory retirement ages based on sex violates Title VII.
b) Other differences based on sex, such as differences in benefits for survivors, will be decided by the Commission by the issuance of Commission decisions in cases raising such issues."

It should be noted that the ultimate test of Title VII rests with the courts, but administrative interpretation provided by the E.E.O.C. in the form of guidelines and decisions is entitled to great deference.

16. Griggs v. Duke Power Co. (U.S.S. CE. 1971 C.C.H. 3 Employment Practices Decisions, #8137

have a disparate impact on the basis of sex or race have been ruled illegal. For example regardless of intent or objective, screening tests that have the effect of excluding proportionately more blacks than whites are in violation of Title VII unless they can be justified as a business necessity. This principle has been extended to "head-of-household" and related criteria on the basis that these kinds of qualifications tend to make benefits available only to male employees and their families, although "head-of-household" status bears no relationship to job performance. We are not aware of any subsequent E.E.O.C. decisions or court cases involving this principle.

b Benefit levels must be equal, regardless of greater cost with respect to one sex than another

For example, the fact that the employer's cost for providing equal annuities may be greater for women than for men is not a valid reason for having a lower comparative benefit for women.

This new principle represents a significant shift in policy, because the E.E.O.C. originally adopted the Department of Labor's interpretation under the Equal Pay Act; which allows unequal benefits, provided that the employer's contributions are equal on the basis of sex. (17) In other words the E.E.O.C. has reversed its earlier option that either equal benefits or equal employer contributions are permissible, by requiring a single standard of equal benefits.

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17. Wage and Hour Division, Department of Labour, Interpretative Bulletin: Equal Pay for Equal Work. Title 29, Chapter V, Part 800, February 3, 1967, Section 800-116 (d)

"If employer contributions to a plan providing insurance or similar benefits to employees are equal for both men and women no wage differential prohibited by the Equal pay provision will result from such payments, even though the benefits which accrue to the employees in question are greater for one sex than for the other. The mere fact that the employer may make unequal contributions for employees of opposite sexes in such a situation will not, however, be considered to indicate that the employer's payments are in violation of Section 6 (d), if the resulting benefits are equal for such employees."

C.C.H. #4750. 116.

The E.E.O.C. upheld this interpretation in a recent case involving a sick leave plan where men received higher benefits than females, even though the premiums charged were higher for women than for men. "To determine whether or not benefits are equal, we will look to the benefits actually received, rather than to the contributions made by the employer to provide the benefits". (18)

Based on this principle of equal benefits, the American Nurses Assocation and other individuals have filed complaints with the E.E.O.C. against several universities that have retirement plans that provide different pension benefits for male and female participants. These are money-purchase plans where the monthly annuity income purchased by accumulated retirement funds is determined by actuarial tables, which recognize the difference between male and female longevity. The E.E.O.C. has ruled that there is reasonable cause to believe that the use of two separate actuarial tables based on sex to calculate the retirement of university faculty is in violation of Title VII. (19)

c Disabilities caused or contributed to by pregnancy shall be treated like any other temporary disabilities

This principle does not represent a new policy, but rather the explicit synthesis of earlier rulings concerning pregnancy leave and benefits. Pregnancy leave of absence has been a contentious issue in the U.S. courts, particularly with regard to teachers who are sometimes required to commence their leave at a fixed period. The E.E.O.C. guidelines with regard to pregnancy benefits, however, have not generated the same degree of legal activity. To date, the E.E.O.C. has issued one decision concerning benefits; where it ruled that a medical disability plan discriminated illegally against females where it excluded maternity leave. (20)

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18. E.E.O.C. Decision No. 73-0501, May 3, 1973, C.C.H. #6397

19. Women Today vol. 3, No. 18 September 3, 1973

20. Decision No. 73-0479, February 14, 1973, C.C.H. #6381

Age Discrimination

In the United States, discrimination on the basis of age is covered by a separate statute, the Age Discrimination in Employment Act of 1967. (21) Similarly to the Civil Rights Act, this statute provides that "It shall be unlawful for an employer ... to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's age". As in Ontario, "age" is defined as covering persons in the 40 to 65 year age group.

The Age Act is modified in its application to employee benefit plans by a specific exemption of "any bona fide employee benefit plan such as a retirement, pension, or insurance plan, which is not a subterfuge to evade the purposes of this Act". A 1969 regulation interprets this exception as meaning that benefits paid under qualifying benefit plans need not be the same for older workers as for younger workers. Benefits may vary on the basis of age, provided that the employer's payments or costs are equal for both older and younger workers. Benefits may vary where they are calculated according to a formula involving age and length of service. (22)

The same regulations also interpret the exception as meaning that employees may be forced to retire against their will and regardless of their age if they are members of a bona

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21. C.C.H. Employment Practices Guide #3235 to #3269

22. C.C.H. Employment Practices Guide #4770. 120
"...Thus, an employer is not required to provide older workers who are otherwise protected by the law with the same pension, retirement or insurance benefits as he provides to younger workers, so long as any differential between them is in accordance with the terms of a bona fide benefit plan. For example, an employer may provide lesser amounts of insurance coverage under a group insurance plan to older workers than he does to younger workers where the plan is not a subterfuge to evade the purposes of the Act. A retirement, pension, or insurance plan will be considered in compliance with the statute where the actual amount of payment made, or cost incurred in behalf of an older worker is equal to that made or incurred in behalf of a younger worker, even though the older worker may thereby receive a lesser amount of pension or retirement benefits, or insurance coverage. Further an employer may provide varying benefits under a bona fide plan to employees within the age group protected by the Act, when such benefits are determined by a formula involving age and length of service requirements."

fide retirement plan that contains compulsory retirement ages. (23)

This relaxation of the age discrimination ban is subject to two conditions: Firstly,

1) the plan must be established in good faith and secondly,
2) the plan will not excuse the failure to hire a worker. (24)

Marital Status Discrimination

There is no federal legislation in the United States that prohibits discrimination on the basis of marital status itself in any aspect of employment. However, differential treatment of married women and married men has been prohibited on the basis of sex-based discrimination.

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23. Ibid ... #4770. 110

"...Thus, the Act authorizes involuntary retirement irrespective of age, providing that such retirement is pursuant to the terms of a retirement plan meeting the requirements of section 4 (f) (2) ...This exception does not apply to the involuntary retirement before 65 of the employees who are participants in the employer's retirement or pension program."

24. Ibid ... #541

CHAPTER FOUR:

KEY ISSUES AND GENERAL RECOMMENDATIONS

This chapter reviews the major points that were raised in the submission to the Task Force, and in our own deliberations. It also contains some general recommendations.

I Mortality and Morbidity: Statistical Averages and Classifications

a Definitions:

A mortality or morbidity rate, usually quoted on a per annum basis, is a fraction such as .0147, or 14.7 per thousand. This rate, applied to 10,000 persons, means that 147 is the mathematically expected number of deaths (or illnesses) that will be recorded in one year if each of the 10,000 is observed for one year. A similar fraction, called a termination rate, may be applied to a group of disabled persons to estimate the number who in one year will cease receiving a disability income because of either death or recovery from disability.

b Relation to Employee Benefits:

Rates such as these, based on past experience, are used by actuaries to calculate the expected costs of providing large numbers of persons with benefits that will become payable only if a person is dead (life insurance), only while he or she is disabled (sickness and accident insurance, disability pensions), or only while he or she lives (pensions for life).

These expected costs are statistical averages, subject to the fluctuations of chance. In the example above, where the expected number of deaths (or illnesses) was 147, one would not be greatly surprised to observe during the ensuing year an actual number of deaths (or illnesses) anywhere between 130 and 165. Also, they are based on past observations, and the group under present consideration should be similar in its characteristics to the previously observed groups if predictions are to be useful.

c Mortality Classes:

It has long been known that mortality rates tend to rise with increasing age. Industrialized countries such as Canada show higher mortality rates for males than for females of the same age, with the possible exception of the child-bearing ages.

The following annual death rates per 1000 for Ontario are based on the 1966 census and deaths during 1965-1967.

Annual Death Rates by Age and Sex, Ontario, 1966 (1)

Age	22	32	42	47	52	57	62	67	72	77	82	87	92
Male	1.6	1.4	3.4	5.7	9.9	16.0	25.3	38.1	55.4	83.5	125	183	259
Female	0.5	0.8	2.0	3.2	5.0	7.8	12.1	18.7	30.8	53.3	91	147	226

These rates embrace all the heterogeneous states of health and hazards of different occupations in Ontario. A more homogeneous health and occupational grouping, the school teachers of Ontario, produced the following annual rates per 1000 during the eleven years 1962-1972 inclusive.

Annual Death Rates by Age and Sex, Ontario Teachers, 1962-1972 (2)

Age	22	32	42	47	52	57	62	67	72	77	82	87	92
Male	0.4	0.7	2.1	2.8	4.6	8.0	13.5	25.8	34.7	55.0	109	150	207
Female	0.2	0.5	1.5	2.1	2.9	4.3	6.2	12.8	23.2	37.0	69.7	128	208

The rates above age 62 are for pensioned teachers. The rates below age 67 are for active teachers, whose recorded mortality is seen to be very much less than that of the general population of Ontario. In part, this may be explained by the fact that a disabled teacher with 10 or more years of service leaves the profession with a disability pension, and his or her subsequent death will be recorded among pensioners (rather than among active teachers).

The ratio of male mortality to female mortality in both these tables is about two to one at ages 59-69 and somewhat lower at the other ages. These variations in the sex ratio agree quite well with the very large volumes of data on individual lives supplied by 12 of the biggest North American life insurance companies for the years of 1966-1971 and summarized in Table 12, Page 21, of the Society of Actuaries' 1972 Reports of Mortality and Morbidity Experience.

Mortality studies are often made using classifications other than age and sex; e.g. occupation, weight, blood pressure, smoking tobacco, drinking alcohol, have all been studied by actuaries and

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1. Statistics Canada, Life Tables, Canada and Provinces, 1965-1967, Catalogue No. 84-527.

2. Data prepared for Task Force from records of the Teachers' Superannuation Commission of Ontario.

medical statisticians to uncover correlations with mortality rates. Persons whose classification points to much higher mortality than average are sometimes charged higher premiums for life insurance, either on a temporary or a permanent basis. Since these classifications are to some degree within the control of the individual person, however, it would be unwise for an insurance plan to offer permanently lower premium rates to those whose classification at the time of entering the plan was more favourable than the average; there would be no way to recover future excess losses caused by the individual's move to a higher-risk classification.

Similarly, an annuity plan could not afford to offer a lifetime annuity income at a favourable cost to a person whose classification pointed to higher than average mortality, if this annuitant could subsequently lower his or her mortality by adopting a different way of life.

On the other hand, a person's sex and date of birth are beyond the control of the individual (apart from rare ambiguities of sex, or age misrepresentation). This is the basis on which life insurance is offered at lower costs to persons who by age and sex are in the lower risk mortality classes; and annuities are offered at lower costs to persons who by age and sex are in the higher risk mortality classes. For example, to buy an annuity that will pay him $200 per month for as long as he lives, a man aged 60 is asked to pay more than a man age 65 is asked to pay for a similar annuity on the ground that younger persons generally have a longer life ahead of them than older persons. An illustration of the use of sex classification would be where a man aged 48 is asked to pay more for a 10 year term life insurance policy than a woman age 48 is asked to pay, on the ground that men between the ages of 48 and 58 experience higher mortality than women in the same range of ages.

A single measure, the mathematically expected future years of lifetime following a given age, or "life expectancy", can be computed to give a yardstick for comparing the overall future mortality of one group with another. The following table shows sex-based differences in life expectancy at age 65 in Canada. It also shows that the gap between the sexes has been widening, and these figures give no indication of a narrowing trend.

Life Expectancy at Age 65 by Sex, Canada, 1930 to 1967 (3)

Date of Study	1930-32	1940-42	1950-52	1955-57	1960-62	1965-67
Females	13.72	14.08	14.97	15.60	16.07	16.71
Males	12.98	12.81	13.31	13.36	13.53	13.63
Female Excess Years	0.74	1.27	1.66	2.24	2.54	3.08

3. Statistics Canada, Life Expectancy Trends, 1930-32 to 1960-62. Catalogue No. 84-518

d Morbidity Classes

The term morbidity is used here to cover both the relatively short terms of disability caused by sickness or accident which are associated with plans for weekly indemnity insurance, salary continuation, sick leave pay, et cetera; and the potentially much longer terms of disability, usually of a total nature, associated with disability pensions and long term disability insurance.

The expected cost of any of these plans depends not only on the frequency of occurrence of disablement (the morbidity rates per se) but also on the probable duration of the actual disability (depending on the termination rates). For short-term weekly indemnity plans, the experience of group insurers in North America is regularly measured against expected claim cost tables based on 1947 to 1949 experience. (4) Our analysis of these data indicates that the relative difference between female and male morbidity has not changed, but has remained stable at a ratio of about two to one.

In weekly indemnity insurance, claims data are not usually separated by age, although the insurers may in fact consider the age distribution of a group of lives in setting the initial premium for the group. Some data by both age and sex are published for the results of group long-term disability insurance. The following table of experience under plans with the common six-month elimination period shows the sex and age differences in annual rates of disablement per 1,000 lives during 1966 to 1970. The same pattern of lower male rates up to age 54, and higher male rates thereafter, was also revealed in the corresponding data for the less common plans with three-month and twelve-month elimination periods.

Morbidity Rates by Age and Sex under Long-Term Disability Plans, 1966-70 (5)

Age	Under 40	40-44	45-49	50-54	55-59	60-64
Males	0.70	1.78	3.12	6.09	9.87	17.27
Females	0.90	4.10	5.02	7.05	8.11	14.48

A very rough indication of the difference between the sexes in the combined effect of disability frequency and the longevity of disabled pensioners is found by studying the proportion of all Ontario teacher pensioners who are drawing disability pensions at any given date. In 1950, 18.1 per cent of male Ontario teacher pensioners were drawing disability pension; the corresponding figure for women was 27.5 per cent. By 1965 both these proportions had declined steadily, down to 10.5 per cent of the men and 17.7 per cent of the women. Since 1964 the eligibility requirements for

4. Society of Actuaries, 1971 Reports of Mortality & Morbidity. pp. 190-202.
5. Society of Actuaries, 1972 Reports of Mortality & Morbidity. pp. 258-280.

non-disability pensions have been eased, and no new disability pensions have been granted above age 65. Thus by 1972 the proportions of disability pensioners were down to 7.3 per cent of the men pensioners, and 10.1 per cent of the women pensioners. Throughout the years 1950 - 1972, the female percentage has never been less than 1.4 times the male percentage.

e Conclusion

The foregoing differences in mortality and morbidity between the different ages and sexes will continue to be facts of life into the foreseeable future, whether the individual persons in a group are separately classified by age and sex, or not. Two groups with different age and/or sex structures will experience different aggregate costs if identical pension and insurance benefits are provided for every member of both groups. This will be true whether the plans are insured by an insurance company or are self-insured by the groups themselves.

We therefore recognize the validity of the use of statistical averages and classifications by age and sex in determining the aggregate cost of a benefit for a group of employees. The next section addresses itself to the question of whether or not employers should apply these group differences to their employees.

II Equal Benefits or Equal Costs?

Consider two employees, working at the same job for the same pay. One is aged 25, the other 63. For one month's work each is credited with the same pension income, to start at age 65. To illustrate, a single dollar invested at 6¼ per cent for 40 years from age 25 to age 65 would buy, for the 25-year old employee, ten times as much monthly pension at age 65 as one dollar would buy if it were invested for only the two years from age 63 to age 65. The cost, at the same point in time, of granting equal pension benefits to the two workers for that month's work would therefore be ten times as great for the older as for the younger. Since the employer normally bears part of the cost of providing the benefit, an equal benefit may imply unequal effective remuneration. Is this fair or unfair? Conversely, the costs and effective remuneration may be kept equal. For example, suppose 12 per cent of pay is invested for each worker in a money-purchase pension plan. Then the 25-year old would receive ten times the pension benefits that the 63-year old would receive for the same month's work. Is this fair or unfair?

a Cost to the Individual

The future dates when an individual will become disabled and recover, or have an automobile accident, or die, are unpredictable. But for a large group of individuals the average frequency and timing of such hazardous events is much less uncertain, and the mechanism of insurance becomes possible. The essence of insurance is the pooling of risks, whereby the individual submerges his/her very uncertain future into the more predictable future of the group as a whole. An immediate question arises. Should everyone in the group pay the same premium (or contribution, or tax) for the same possible benefit?

Consider a group containing 2,000 Canadian men aged 60 to 65 and another group of 2,000 aged 40 to 45. Of the first group, some 30 to 50 men will likely die within one year. Of the second group, fewer than 10 men will likely die within one year. If the two groups were merged, and all were asked to pay the same insurance premium rate to cover the total cost of their life insurance for one year, the younger men would argue that it was unfair to ask them to subsidize the older. They would be inclined to seek their insurance elsewhere, if they were free to do so. Their departure would, of course, raise the cost for the remaining older men.

This example illustrates the impossibility of maintaining a risk-pooling plan on a voluntary basis, in situations where members of the group differ widely in their inherent risk, and the members are asked to pay the whole cost by a uniform payment. Either the plan must be compulsory, as in a tax-supported state plan with no legal way to opt out; or part of the total cost must be paid by someone else. The latter situation is the usual one in employee group insurance plans, where a uniform employee contribution rate can be set that will be attractive to the members with the lowest risk. The extra cost for the higher-risk members will tend to be met by the employer. In fact, if the uniform contribution rate charged to all employees were higher than that required to cover the actual costs for the age and sex classes with the lowest risk, then these lower-risk persons could argue that this was unfair discrimination. The same consideration of high and low risk classes applies to disability benefits as to death benefits.

Several responses to our Interim Report asked for clarification as to whether or not we were recommending that the employer must absorb the extra cost of providing equal benefits. This was not our intention. By recommending that, in general, employer contribution rates should be allowed to vary by age and/or sex on an actuarial basis only, and only in order to achieve equal benefits, we were allowing for the tendency that the employer will subsidize high risk employees, as described above. By recommending that, in general, employee contribution rates should not vary by age and/or sex, we did not mean to preclude the possibility of spreading the cost of the high risk employees over the entire group of employees. In other words, we are recommending that the location of the extra costs due to equal benefits be optional, provided that classes of employees defined by age and/or sex do not absorb these costs. Hence, the extra costs can be borne exclusively by the employer, shared equally between all of the employees, or a combination of both arrangements.

b Money-Purchase Pension Plans

In the case of the money-purchase pension plan, we recognize the primacy of cost equality over benefit equality. These plans present the employer and employee with a defined cost, rather than a defined benefit. They are easily understood and administered, and are thus most popular with small employers. The same fixed percentage of pay will produce for a young person much more pension at retirement that it will for an older person, and slightly more

pension for a man than for a woman of the same age. The latter distinction results from the lower mortality of women, outlined in section I of this chapter. To avoid the distinction, it has been suggested that Ontario sellers of annuities be legally required to sell a life-time annuity to a man and woman of the same age at the same price. If these unisex rates were enforced in Ontario, annuities for males would simply be bought from sellers outside of Ontario, in other provinces, or other countries. Thus free competition would cause the Ontario unisex rates to rise toward the cost levels for women alone, and Ontario women pensioners would ultimately be receiving no more income from a money-purchase plan than under the present bi-sexual rates.

c Cafeteria Approach

We also realized that emphasizing benefit equality (rather than cost equality) according to a defined benefit approach would not encourage the development in Ontario of the "cafeteria" approach. The latter arrangement is a defined contribution approach wherein the employee is offered a choice of various benefits, with their total cost to the employer being the controlling factor.

It has been suggested that the "cafeteria" approach allows employees to choose their own needs, and this is theoretically true. However, we did not receive any concrete evidence that the "cafeteria" approach is a viable alternative to the equal benefits approach. It should be noted that flexibility and individual choice are also possible under defined benefit plans. We therefore suggest that the Minister of Labour reconsider our preference for benefit rather than cost equality only when it has been demonstrated that money-purchase cafeteria plans do meet individual needs.

d Meshing of Benefits

In response to suggestions in briefs received, we also considered the problem of meshing different kinds of benefits together; for example, the desirability of group life insurance schedules that decrease with age in recognition of the increasing death benefit available as the employee's total contributions to a pension plan rise. The majority of the Task Force does not favour this kind of variation by age on the basis of imputed need, because an older employee with less than the average service for his age would be deprived of the same total death benefit as that available to a younger employee. The difficulty of integrating death benefits satisfactorily for all employees can be overcome by keeping the employer-supported coverage for all employees at a low level and providing optional employee-pay-all benefits at higher levels of insurance, provided that enough employees choose these levels to make the group insurance concept viable. If not, we recognize that our recommendations could lead to a reduction in the group life insurance levels available to younger employees.

e Conclusion

The majority of the Task Force recommends that, in general, the level of benefits, rather than the cost of the benefits, be the criterion of fairness. In the eyes of the public, the level of benefits is not only more visible than the cost, but is deemed by many to be more socially relevant than the cost. From this point of view, it is not unfair to any of the employees if the employer's costs are higher for the old than the young, for women than for men (defined benefit pensions), for men than for women (group life insurance, spouse's pension), for women than for men (disability insurance). We therefore recommend that, in general, the level of benefit to the individual employee should not vary by sex or age, nor should the cost to the individual employee so vary. Exceptions to this general principle are noted in this report, especially in the case of money-purchase pension plans, and voluntary employee-pay-all plans or features of plans. The same general recommendations apply to classification by marital status, with the exceptions noted in this report regarding surviving spouses' benefits and employee contributions for such benefits.

III. Needs - Real or Assumed?

Many of the employee benefit differentials that exist are not based upon actuarial cost-considerations, but upon assumptions of "need" as a function of sex, marital status, or age. For example, the argument generally used to support higher benefits for married than for single employees is that, with a few exceptions, married people usually have heavier obligations towards family dependents than do single people. Similarly, it is often presumed that most older people have had the opportunity to accumulate pension or other private assets, which offset their need for income-maintenance or life insurance protection in comparison with younger people. Several of the briefs that we received justified current employee benefit practices on the basis of these similar generalizations concerning "needs".

We do not deny that predictions of need based on sex, marital status, or age may turn out to be a reasonably accurate description of reality; but we are concerned about the consequences where individual circumstances do not fit the group stereotype. For instance, hardship can and does result when a widower is denied access to surviving spouses' benefits, where he has children to support without the assistance of his dead wife's earnings or unpaid housekeeping services. Conversely, because most widows' benefits are awarded without any reference to real need, an independently wealthy widow may receive a "windfall" gain.

The inconsistency of presumed needs can be illustrated by taking a hypothetical example outside our terms of reference. We will also assume the principle of a negative relationship between income and insurance coverage. If one were then to take occupation as a rough indicator of lifetime earnings and opportunity to accumulate assets, one could quite feasibly reduce life insurance coverage for actuaries in relation to lower-paid occupational groups. The justification would be that, since actuaries have such high average earnings relative to other occupations, they do not need a high level of insurance protection. We see little difference between this clearly ludicrous example of differentiation on the basis of assumed need, and the familiar practice of reducing life insurance coverage with advancing age. Here again, the justification is based on the assumption that older people have adequate independent assets relative to younger people. In both cases, not all individuals in the group will have high earnings or assets. Some actuaries are poor, while some older people do not have a "nest-egg".

If employers, quite understandably, wish to concentrate their employee benefits in a manner that corresponds to needs, then we would suggest that they do so on the basis of objective rather than presumed need. On the other hand, if benefits are currently awarded without reference to real need to some groups of employees, then they should be extended to all employees on the same basis.

Conclusion

We propose that assumptions of need based on group characteristics are contrary to the intent of Part X of The Employment Standards Act. We therefore recommend that, in general, employee benefits that are designed to meet needs should be awarded on the basis of real rather than assumed need. Some exceptions with regard to marital status (surviving spouses' benefits) and age (optional life insurance coverage) are noted in the report.

IV. General Recommendations

This section sets out some recommendations and principles that have general application throughout the following chapters. Most of them have been developed in response to the major concerns identified in the briefs which we received.

a Application to Voluntary Plans or Features of Plans

Our original mandate, Section 4(1)(g) of the Ontario Human Rights Code, provided that no person should discriminate against any employee with regard to any term or condition of employment. This provision clearly applied to compulsory employee benefit plans, but several briefs raised the question as to whether or not the phrase "term or condition of employment" could be interpreted to include voluntary employee benefit plans.

In our Interim Report we proposed that, even if the wording of Section 4(1)(g) did not extend to voluntary plans, it was the intent that it do so. The benefits derived from a voluntary plan are available only because of employment with a particular employer. If this type of plan were allowed to discriminate on the basis of sex, marital status, or age, then employees would not have access to non-discriminatory alternatives. Indeed, the exception of voluntary plans would have created a serious "loop-hole" whereby the intent of Part X could have been evaded.

In our Interim Report, we recommended that, "Section 4(1)(g) be amended to ensure that it applies to voluntary employee benefit plans, or features of plans". Part X of The Employment Standards Act implemented this recommendation by making it clear that it applies to a fund, plan or arragement, "in which an employee may elect to participate or not and to which the employer contributes or does not contribute". (Section 34(1)). It should be noted that "voluntary" is defined in terms of optional access, rather than in terms of the employer's contribution.

b Employee-pay-all Plans or Features of Plans

Although we have recommended the inclusion under Part X of voluntary plans or features, we do not consider that the same conditions can be applied to those that are provided on an employee-pay-all basis as to other types of plans. Under an employee-pay-all plan there is, by definition, no employer element to take up any additional costs incurred by the requirement of equal benefit levels. This does not create a problem under compulsory employee-pay-all plans, where the additional costs can be averaged across all of the members' contribution rates. In the case of compulsory employee-pay-all plans we are recommending that the contribution rates shall not be allowed to vary by sex, age, or marital status. Under voluntary employee-pay-all plans, however, equal contribution rates would

create anti-selection problems since low-risk employees would be unlikely to elect membership because they would be unwilling to subsidize high-risk employees. In this case, therefore, it is reasonable that the employee contribution rates be permitted to vary on the basis of age or sex. An exception is proposed with regard to voluntary employee-pay-all life insurance plans, where we permit both benefit levels and employee contribution rates to vary on the basis of age.

* Recommendation No. 1 (2 - revised)

WE RECOMMEND THAT, WITH THE EXCEPTION OF LIFE INSURANCE PLANS, BENEFIT LEVELS UNDER VOLUNTARY EMPLOYEE-PAY-ALL PLANS, OR FEATURES OF PLANS, BE EQUAL ON THE BASIS OF SEX AND/OR AGE; BUT THAT ANY VARIATION IN EMPLOYEE CONTRIBUTION RATES BY SEX AND/OR AGE SHALL BE ON AN ACTUARIAL BASIS ONLY.

Recommendation No. 2 (2 - revised)

WE RECOMMEND THAT BENEFIT LEVELS UNDER VOLUNTARY EMPLOYEE-PAY-ALL LIFE INSURANCE PLANS SHALL BE ALLOWED TO VARY ON THE BASIS OF AGE, BUT NOT ON THE BASIS OF SEX. EMPLOYEE CONTRIBUTION RATES SHALL BE ALLOWED TO VARY BY SEX AND/OR AGE ON AN ACTUARIAL BASIS ONLY, AND BY AGE IN RELATION TO THE BENEFIT SCHEDULES AVAILABLE.

c "Head-of-household" and Related Criteria

Employee benefit programs were traditionally introduced to meet special employee needs, and differences based on sex arose because male "breadwinners" were assumed to have greater income maintenance needs than female employees. Income maintenance was often deemed of lesser importance to female employees, when it was further assumed that they made little or no contribution to family income. In the past, women themselves demanded less employee benefit protection than men. As discussed above, the use of sex as a rough indicator of needs has become increasingly inappropriate as women's employment activity has expanded to the point where four out of ten married women in the province are in the labour force. In addition, data on the relationship between husbands' income and wives' labour force participation indicate that many of these women need to work in order to supplement their husbands' low earnings. Hence, although it is true to say that wives are usually the secondary earner, their income is an increasingly important component of total family income and, therefore, warrants equal insurance protection.

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* The number in parenthesis following the recommendation number refers to the original recommendation number in the Interim Report. Revisions and new recommendations are also noted in parenthesis.

While respecting the needs orientation of benefit design, we are aware that assumed needs are often used to rationalize substantial sex-based differences and we, therefore, reject any differentiation that is directly linked to sex. Substitution of objective criteria of need however, could result in administratively complex and distasteful needs tests; while substitution of "head-of-household" criteria would tend to favour male employees, who would be more likely to qualify, even if their wives made substantial contributions to family income. In addition, employees increasingly view their benefits as a form of remuneration, and our society has rejected the concept of pay according to need.

Recommendation No. 3 (3)

WE RECOMMEND THAT "HEAD-OF-HOUSEHOLD" AND RELATED CRITERIA SHALL NOT BE PERMITTED IN DETERMINING ELIGIBILITY, LEVEL OF BENEFITS, OR ANY OTHER ASPECT OF BENEFIT DESIGN.

d Contentious Practices

In addition to the use of "head-of-household" and related criteria, it has been suggested that several other practices should be prohibited on the ground that they constitute evasions of the intent of Part X. For example, even uniform service requirements might have a disparate impact on male and female employees, or on young and old employees. Similarly, salary-related benefit schedules may compound salary differences in situations where male employees tend to earn higher salaries than female employees. Finally, different plans for different classes or groups of employees may coincidentally result in different benefits for male and female employees, such as when the management group is predominantly male and the clerical group is predominantly female in composition.

While we recognize that salary-related benefit schedules may aggravate sex-based differences in salary, we consider that this problem should be tackled at its source, rather than its by-product. Salary-related benefit schedules are not discriminatory per se, and any sex-based differences that do result should be dealt with through enforcement of equal pay legislation in Ontario. We are also satisfied that the equal employment opportunity provisions of the Human Rights Code can deal directly with the occupational division of labour by sex. We do not consider that the intent of Part X was to prohibit the traditional differences in benefit programs that are applied to different categories or classes of employees. We therefore recognize that benefit differentials may be related to salary, service, or class of employment, provided that these practices are not adopted to evade the intent of Part X.

Recommendation No. 4 (4)

WE RECOMMEND THAT EMPLOYEE BENEFIT PLANS, OR FEATURES OF PLANS, SHALL BE ALLOWED TO VARY PROVIDED THAT THE DIFFERENTIAL ON WHICH THIS VARIATION IS BASED DOES NOT EVADE THE INTENT OF PART X OF THE EMPLOYMENT STANDARDS ACT.

e Application to Statutory Benefit Plans

Several briefs that we received asked whether or not Part X requires the employer to compensate for statutory benefit plans that differentiate on the bases of sex, marital status or age. The Employment Standards Act has no jurisdiction over statutory benefit plans such as C.P.P. and U.I.C. and it therefore applies only to the private component of integrated or stacked benefit programs. Employers will not be expected to make up for the differentials in statutory plans outside provincial jurisdiction. In other words, the requirement of equalization will be applied only to the private component of the benefits, not the total benefits. It should be noted that, since the publication of our Interim Report, the Canada Pension Plan has been amended to remove any sex-based differences in dependency and survivor benefits.

The following three chapters contain our detailed recommendations concerning the treatment of employee benefit differentials according to the three grounds of sex, marital status and age.

CHAPTER FIVE:

RECOMMENDATIONS CONCERNING SEX

1. GENERAL

A. INTRODUCTION

Lack of equality of opportunity between the sexes is the most easily identifiable and the least justifiable area of differentiation that we studied. Since sex is an invariant characteristic, employees grouped by sex have no opportunity of partaking of the other group's benefits. We recommend that, in general, grouping and differentiation on the basis of sex should be prohibited in all aspects of employee benefit design. Some difference of treatment based on actuarial considerations, however, will not be deemed contrary to Part X.

Before presenting our plan-by-plan recommendations we will review the major issues that were raised in our consideration of sex-based discrimination. In some cases, this review results in general recommendations that apply to all types of plans.

B. MAJOR AREAS OF CONCERN

a Sex-based Differences in Mortality

These actuarial differences have traditionally had a significant influence on all aspects of benefit design, but particularly in respect of pension benefits and contributions, where women's greater average longevity constitutes a significant cost factor. In addition to pensions, sex-based differences in mortality are relevant to the design of life insurance plans. In this case, women's average lower mortality means that it is cheaper to buy the same amount of life insurance for women than for men. In absolute terms, however, the sex-based differences in costs are less significant in the area of life insurance than in pension plans.

An extended discussion of sex-based differences in mortality and their implications, including a review of the main points of view presented to the Task Force, is included in the discussion of key issues. The relevant conclusions can be summarized as follows:

i) We accept the principle that sex-based differences in mortality may be utilized in calculating the overall costs of employee benefit plans.

ii) With regard to life insurance plans, we reject in general the reflection of these actuarial cost considerations in either benefit schedules or employee contribution rates on the grounds that this would be contrary to the intent of Part X.

iii) With regard to pension plans, we do not accept the application of these cost consideration in either benefits or employee contributions, except in some aspects of pension plans as indicated below.

b Sex-based Differences in Morbidity

There are some sex-based differences in morbidity, but they are variable in contrast to the constant sex-based differences in mortality. Although these morbidity differences are applied to the overall costing of disability programs, they are not always reflected in group differences in benefits and/or employee contributions. We do not, in general, accept reference to actuarial differences in morbidity as a sufficient ground for sex-based differences in employee benefits or employee contributions under disability programs.

c Pregnancy

Absence due to pregnancy or pregnancy-related disability is usually excluded from both short-term and long-term disability programs. The Equal Employment Opportunity Commission in the United States has directed that disability caused or contributed to by pregnancy, miscarriage, abortion or childbirth must be treated like any other temporary disability under existing temporary disability insurance or sick leave plans. (See Appendix II for text of U.S. guidelines concerning sex-based discrimination in employee benefits). Several briefs to the Task Force recommended that Ontario follow this precedent. We make a distinction between the use of disability benefits for absence due to pregnancy complications or unrelated sickness that occurs during pregnancy, and normal pregnancy leave of absence. We do not recommend compulsory inclusion of normal pregnancy leave of absence under disability coverage because:

i) In Canada, partial income maintenance is usually available under Unemployment Insurance for absence due to pregnancy for up to a maximum 15-week benefit period. Hence, there is less need to provide income protection during the normal pregnancy leave of absence than in the United States.

ii) Several briefs pointed out that there is an element of choice about pregnancy that does not apply to other temporary disabilities.

Exclusion of benefits for absence due to pregnancy complications or coincidental sickness, however, can cause undue hardship for the women employees. These forms of disability are certainly not voluntary. We recommend therefore, that they should be treated like any other form of disability.

d Duplication of Extended Health and Dental Insurance Coverage.

Duplicate coverage for basic medical insurance under OHIP is prevented by a system of exemption forms whereby an employee can choose not to elect enrolment at his or her place of work, if the spouse has access to coverage elsewhere. No such system for controlling against double coverage exists under extended health or dental plans. The practice of restricting coverage to male employees only has effectively avoided the duplicate coverage problem.

Several briefs in response to our Interim Report cited this duplication problem as a reason for not implementing our recommendation that access to extended health insurance plans should not be based on sex or "head-of-household" and related criteria. We repeat our statement that we do not consider that these administrative problems warrant waiving the principle that employed spouses should have complete freedom to choose which spouse takes out coverage. We do, however, recognize the need for clarification concerning acceptable and non-acceptable practices to avoid duplication.

Employers should be able to require that only one spouse can take out coverage, as is the practice under OHIP. However, as with OHIP, the spouses should be free to elect the coverage that they prefer. Denial of access to a plan on the basis that the employee is already covered under another plan would be prohibited. The first spouse to have coverage should not be given automatic precedence, since the other spouse may thereby be denied access to better coverage. We have no objection to the employer requiring married employees to state under which plan they wish to have coverage.

II TYPES OF PLAN

A. Pension Plans

The foregoing discussion of sex-based differences in mortality is clearly relevant to our recommendations concerning pension plans. We are recommending equal benefits on the basis of sex under defined-benefit pension plans, except in the event of elective options and early or postponed retirement, where actuarial differences shall be allowed to be applied to the calculations of individual benefits. The application of these actuarial differences shall also be permitted under money-purchase, profit-sharing, composite, and voluntary additional pension plans.

a Access

We have found that some pension plans are made available only to male employees, while other plans contain different eligibility or participation requirements for men and women. For example, some pension plans are compulsory for male employees, but optional for female employees; or in other cases women have to meet longer service requirements before they are eligible to enroll in the plan. We consider that eligibility and participation requirements based on sex constitute discrimination and should, therefore, be prohibited.

Recommendation No. 5 (5)

WE RECOMMEND THAT ACCESS TO AND PARTICIPATION REQUIREMENTS FOR PENSION PLANS SHALL NOT VARY BY SEX.

b Benefit Schedules

i) Employee benefits under defined-benefit pension plans

In 1970, 75.1 per cent of all pension plan members in Canada belonged to defined-benefit plans. (1) In this type of plan, sex-based differences in mortality do not enter into the formula for calculating the normal service or disability pension benefits; it is based on years of service and/or earnings. This means that a man and a woman with the same earnings and service record will receive the same monthly income when they retire or are disabled.

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1. Statistics Canada, Pension Plans in Canada, 1970 . Catalogue No. 74-401, Ottawa, October 1972. pg. 17.

The following recommendation applies to normal service and disability benefits under defined-benefit pension plans, because we consider it acceptable to allow actuarial variations in employee benefits arising from additional voluntary contributions, elective-options, and early or post-poned retirement.

Recommendation No. 6 (6 - revised)

WE RECOMMEND THAT, WITH THE EXCEPTION OF THE "MONEY-PURCHASE" FEATURES LISTED IN RECOMMENDATION NUMBER EIGHT, EMPLOYEE BENEFIT SCHEDULES UNDER DEFINED-BENEFIT PENSION PLANS SHALL NOT VARY BY THE SEX OF THE EMPLOYEE.

ii) Employee Benefits under money-purchase, profit-sharing, and composite pension plans

As of January 1, 1970, out of 16,137 pension plans in Canada there were 9,045 money-purchase, profit-sharing, and composite plans, but the membership was low in relation to total pension plan membership:

Males - 139,843 or 6.5 per cent of all male members of all pension plans.

Females- 45,432 or 6.0 per cent of all female members of all pension plans. (2)

Under this type of plan, the monies paid in by the time of retirement are equal by sex, but sex-based differences in mortality affect the purchase of an annuity. This means that a man and a woman of the same age and with the same monies accumulated at retirement will not receive the same monthly income. It should be noted that such annuities are "equal" for men and women in that the total sum value of the unequal monthly incomes will tend to be the same, when women's greater average longevity is taken into account.

Money-purchase, profit-sharing, and composite pension plans are easy to operate in that costs are fixed, and there are also simplicities of administration which make these plans more attractive to small employers than most other kinds of plans. The result of disallowing money-purchase and related arrangements could be termination of existing plans, rather than adjustment to defined-benefit arrangements. We recommend that sex-based differences shall be allowed in the calculation of employee

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2. Ibid...pg. 31

benefits under money-purchase, profit-sharing, and composite pension plans.

Recommendation No. 7 (7)

WE RECOMMEND THAT THE LEVEL OF EMPLOYEE BENEFITS PRODUCED BY MONEY-PURCHASE, PROFIT-SHARING, AND COMPOSITE PENSION PLANS SHALL BE ALLOWED TO VARY BY THE SEX OF THE EMPLOYEE ON AN ACTUARIAL BASIS ONLY.

iii) Employee Benefits under "money-purchase" features within pension plans

Although the basic pension entitlement under defined-benefit pension plans does not vary by sex, some of these plans permit employees to make additional voluntary contributions. These supplementary plans or features usually operate on a money-purchase principle. Since these features are voluntary, we propose that the application of sex-based differences in mortality should be permitted in calculating employee benefits under voluntary additional pension features, provided that men and women have equal access to participate in these additional plans or features.

Sex-based differences in mortality are also usually applied to elective-options, which may be offered as alternatives to the primary pension benefit, such as joint and survivor options. On the same principle of individual choice as above, we recommend that the application of sex-based differences in mortality to the conversion of primary benefits to elective options effective at retirement shall be allowed, provided that men and women can choose the same range of options.

Instead of adjusting by a uniform discount factor, sex-based differences in mortality are sometimes applied to the alteration of the normal service pension in the event of early retirement, or postponed retirement. Although prohibition of this practice would be administratively easy under trusteed pension plans, where formula adjustments are the norm, it might increase the cost of early or postponed pension benefits under insured pension plans. We recommend, therefore, that the application of sex-based differences in mortality to the adjustment of normal service pension benefits in the event of early or postponed retirement should be permitted, provided that the options of early or postponed retirement are equally available to men and women.

Recommendation No. 8 (8)

WE RECOMMEND THAT EMPLOYEE BENEFIT SCHEDULES SHALL BE ALLOWED TO VARY BY SEX ON AN ACTUARIAL BASIS ONLY IN RESPECT OF THE FOLLOWING "MONEY-PURCHASE" FEATURES, PROVIDED THAT ACCESS TO SUCH BENEFITS DOES NOT VARY BY SEX.

a) UNDER VOLUNTARY ADDITIONAL EMPLOYEE-PAY-ALL PENSION PLANS OR FEATURES;

b) AT CONVERSION OF NORMAL SERVICE PENSION BENEFITS TO ELECTIVE OPTIONS EFFECTIVE AT RETIREMENT, PROVIDED THAT THE SAME OPTIONS ARE OPEN TO EACH SEX; AND

c) AT ADJUSTMENT OF NORMAL SERVICE PENSION BENEFITS AT EARLY OR POSTPONED RETIREMENT.

iv) Death Benefits

We recommend that death benefits under both unit-benefit and money-purchase pension plans should not be allowed to vary by sex, whether they are paid in a lump-sum form or by installments for a guaranteed period.

Recommendation No. 9 (new)

WE RECOMMEND THAT THE AVAILABILITY AND LEVEL OF DEATH BENEFITS UNDER PENSION PLANS SHALL NOT VARY BY THE SEX OF THE EMPLOYEE.

v) Increased Benefits

In addition to those normal pension benefits that are paid only for and in respect of employees, there may be guaranteed increased benefits based on the existence of dependent or surviving children or spouses. Pension design has traditionally recognized the dependency of wives and children upon male employees, but has rarely recognized the responsibility which female employees have towards their families' income. We consider that all guaranteed dependency and survivor benefits should be equally available, regardless of the sex of the employee. For example, survivor benefits available to the widows (and children) of male employees should also be made available to the widowers (and children) of female employees, without any difference in eligibility requirements. In addition to spouses and children any other forms of dependency may be recognized in the plan, provided that they are not based on the sex of the employee.

Recommendation No. 10 (9)

WE RECOMMEND THAT THE AVAILABILITY OF SURVIVOR AND INCREASED BENEFITS PAYABLE UNDER PENSION PLANS BECAUSE OF THE EXISTENCE OF SPOUSES AND DEPENDENT CHILDREN SHALL NOT VARY BY THE SEX OF THE EMPLOYEE, OR BY "HEAD-OF-HOUSEHOLD" AND RELATED CRITERIA.

Under defined-benefit pension plans we do not consider that the level of dependency and survivor benefit schedules should vary by the sex of the employee. Under money-purchase, profit-sharing, and composite pension plans, however, we would accept the application of sex-based differences in mortality in the same manner as proposed with regard to employee benefit levels under these kinds of pension plans.

Recommendation No. 11 (10)

WE RECOMMEND THAT THE LEVEL OF SURVIVOR AND INCREASED BENEFITS PAYABLE UNDER PENSION PLANS BECAUSE OF THE EXISTENCE OF SPOUSES AND DEPENDENT CHILDREN SHALL NOT VARY BY THE SEX OF THE EMPLOYEE OR BY "HEAD-OF-HOUSEHOLD" AND RELATED CRITERIA, EXCEPT UNDER MONEY-PURCHASE, PROFIT-SHARING, AND COMPOSITE PENSION PLANS, WHERE DEPENDENCY AND SURVIVOR BENEFIT LEVELS SHALL BE ALLOWED TO VARY BY THE SEX OF THE EMPLOYEE ON AN ACTUARIAL BASIS ONLY.

c Contribution Levels

i) Compulsory Employee Contribution Rates

We consider that compulsory employee contributions to any kind of pension plan should not vary on the basis of sex.

Recommendation No. 12 (11)

WE RECOMMEND THAT COMPULSORY EMPLOYEE CONTRIBUTION RATES TO PENSION PLANS SHALL NOT VARY BY SEX.

ii) Voluntary Employee Contribution Rates

The available minimum or maximum levels of voluntary employee contributions to pension plans or additional features should not vary on the basis of sex.

Recommendation No. 13 (12)

WE RECOMMEND THAT THE MAXIMUM AND MINIMUM RATES OF VOLUNTARY CONTRIBUTIONS THAT EMPLOYEES MAY MAKE TO VOLUNTARY PENSION PLANS OR FEATURES SHALL NOT VARY BY SEX.

iii) Employer Contribution Rates

Given the higher cost of providing the same benefits for women as for men under defined-benefit pension plans, we accept that employer contribution rates should be allowed to vary by sex.

We have reviewed the various techniques which can be employed to adjust money-purchase and related pension plans in an attempt to equalize the monthly benefit by sex. Although we do not consider it feasible to require adoption of these measures, we wish to facilitate voluntary equalization. With this possibility in mind, we would allow employer contributions to money-purchase and related pension plans to vary by sex, in order to establish approximately the same benefits for men and women. In all cases, employer contributions should vary by sex only in relation to the actuarially-based cost differences involved.

Recommendation No. 14 (13)

WE RECOMMEND THAT EMPLOYER CONTRIBUTION RATES TO PENSION PLANS SHALL BE ALLOWED TO VARY BY SEX ON AN ACTUARIAL BASIS ONLY, AND ONLY IN ORDER TO ACHIEVE EQUAL BENEFITS.

d Miscellaneous Features of Pension Plan Design

Certain design features peculiar to pension plans sometimes vary by sex. The example most frequently cited in briefs to the Task Force was lower pensionable ages for women than for men, which were being interpreted as compulsory retirement ages. The implications of the distinction between retirement age and pensionable age are discussed in the introduction to the Chapter on age-based discrimination. (See page 96).

Recommendation No. 15 (14)

WE RECOMMEND THAT AGE AND SERVICE-RELATED RULES, SUCH AS THOSE FOR ENTRY, AND ELIGIBILITY FOR EARLY AND NORMAL PENSION BENEFITS, DISABILITY AND DEATH BENEFITS, AND VESTING SHALL NOT VARY BY SEX.

B. Life Insurance Plans

Throughout this Report, the term "life insurance" is used to include accidental death and dismemberment (AD&D) and double indemnity plans or features.

Sex-based differences in mortality affect the design of life insurance plans because it is more costly to provide men with the same level of coverage as women. We are satisfied that this cost factor is probably less significant than assumptions of need on the basis of sex in explaining the sex-based differences

that exist. The general recommendations make it clear that we reject the use of sex itself as an indicator of need. We also reject "head-of-household" or related criteria on the basis that they tend to favour males, and bear no relation to job performance.

a Access

As with pension plans, life insurance plans are sometimes restricted to male employees only, or else provided on different terms for men and women, as when coverage is compulsory for the former but voluntary for the latter. We propose that eligibility or participation requirements based on sex are contrary to the intent of Part X.

Recommendation No. 16 (15)

WE RECOMMEND THAT ACCESS TO AND PARTICIPATION REQUIREMENTS FOR LIFE INSURANCE PLANS SHALL NOT VARY BY SEX OR BY "HEAD-OF-HOUSEHOLD" AND RELATED CRITERIA.

b Benefit Schedules

i) Employee Benefits

Life insurance schedules often vary by sex in that women are limited to low levels of coverage, while men are required to, or may, opt for higher levels of coverage. We consider that, where some individuals have greater insurance needs than others, these can be met by the provision of extra voluntary coverage, provided that it is equally available to men and women.

Recommendation No. 17 (16)

WE RECOMMEND THAT EMPLOYEE BENEFIT SCHEDULES UNDER LIFE INSURANCE PLANS SHALL NOT VARY BY SEX OR BY "HEAD-OF-HOUSEHOLD" AND RELATED CRITERIA.

ii) Survivor Benefits

Some life insurance plans include survivor benefit features that are often restricted to, or greater for male employees than for female employees. We consider that survivor benefits should be equally available to men and women. In addition, the benefit schedules should not vary by sex, whether they are payable as a lump sum or as an income benefit.

Recommendation No. 18 (19)

WE RECOMMEND THAT THE AVAILABILITY AND LEVEL OF SURVIVOR BENEFITS PAYABLE UNDER LIFE INSURANCE PLANS BECAUSE OF THE EXISTENCE OF SURVIVING SPOUSES OR CHILDREN SHALL NOT VARY BY THE SEX OF THE EMPLOYEE, OR BY "HEAD-OF-HOUSEHOLD" AND RELATED CRITERIA.

iii) Dependent Coverage

Some life insurance plans include features whereby employees can take out life insurance coverage on the lives of their spouses and/or dependent children. In some cases, these features are restricted to male employees on the assumption that female employees do not want or need them.

Recommendation No. 19 (new)

WE RECOMMEND THAT THE AVAILABILITY AND LEVEL OF DEPENDENT COVERAGE UNDER LIFE INSURANCE PLANS SHALL NOT VARY BY THE SEX OF THE EMPLOYEE, OR BY "HEAD-OF-HOUSEHOLD" AND RELATED CRITERIA.

c Contribution Levels

i) Employee Contributions

In general, employee contribution rates under life insurance plans should not vary by sex. We propose an exception with regard to voluntary employee-pay-all plans, or features of plans. In these cases, we recommend that, although the available benefits should be equal on the basis of sex, the the employee contribution rates should be allowed to vary by sex provided that, a) they can be shown to have an actuarial basis in sex-based differences in mortality, and b) the benefit schedules are equally available to male and female employees.

Recommendation No. 20 (18)

WE RECOMMEND THAT EMPLOYEE CONTRIBUTION RATES TO LIFE INSURANCE PLANS SHALL NOT VARY BY SEX: EXCEPT FOR VOLUNTARY EMPLOYEE-PAY-ALL PLANS OR FEATURES OF PLANS, WHERE EMPLOYEE CONTRIBUTION RATES SHALL BE ALLOWED TO VARY BY SEX ON AN ACTUARIAL BASIS ONLY.

ii) Employer Contributions

Employer contribution rates should be allowed to vary by sex to the extent that the employer makes up the cost differences required to ensure equal benefits.

Recommendation No. 21 (19)

WE RECOMMEND THAT EMPLOYER CONTRIBUTION RATE TO LIFE INSURANCE PLANS SHALL BE ALLOWED TO VARY BY SEX ON AN ACTUARIAL BASIS ONLY, AND ONLY IN ORDER TO ACHIEVE EQUAL BENEFITS.

C. Short and Long-Term Disability Insurance Plans

Our recommendations concerning both short and long-term disability insurance plans are identical, so the two types of plan can be discussed together.

We are recommending that actuarial cost differences due to sex-based differences in morbidity should not be reflected in benefit levels, although they may be applied to employee contribution rates to voluntary employee-pay-all disability programs.

Here again, the provision of greater levels of coverage for male than for female employees may be due to the assumptions of need on the basis of sex which we reject; whether they are established directly, or indirectly through "head-of-household" and related criteria. The discussion of disabilities due to pregnancy is clearly relevant here and, as noted above, pregnancy complications or coincidental sickness should not be excluded from disability insurance programs.

a Access

As with all types of employee benefit programs we are of the opinion that eligibility or participation requirements based on sex are contrary to Part X and should, therefore, be prohibited.

Recommendation No. 22 (20)

WE RECOMMEND THAT ACCESS TO AN ELIGIBILITY REQUIREMENTS FOR SHORT AND LONG-TERM DISABILITY INSURANCE PLANS SHALL NOT VARY BY SEX OR BY "HEAD-OF-HOUSEHOLD" AND RELATED CRITERIA.

b Benefit Schedules

i) Employee Benefits

On the basis that men and women employees have the same need for replacement of their current income, we proposed that their disability benefit schedules should not be based on sex.

Recommendation No. 23 (21)

WE RECOMMEND THAT EMPLOYEE BENEFIT SCHEDULES UNDER SHORT AND LONG-TERM DISABILITY INSURANCE PLANS SHALL NOT VARY BY SEX OR BY "HEAD-OF-HOUSEHOLD" AND RELATED CRITERIA.

ii) Pregnancy Benefits

As noted in the discussion of major concerns, absence due to normal pregnancy should be allowed to be excluded from short and long-term disability programs, but absence due to pregnancy complications or coincidental sickness should not be excluded.

The original recommendation concerning pregnancy benefits attracted considerable comment in the briefs that we received, and it became apparent that additional clarification was required. Three issues emerged, as follows:-

- Definition of pregnancy complications:

  Most of the briefs asked for a common definition of pregnancy complications, and we agree that a regulatory clarification of our distinction is necessary. We have chosen, however, to define absence due to normal pregnancy conditions. Such absences may be excluded from disability coverage. Pregnancy complications are thereby defined by exclusion in that absence for any other pregnancy-related conditions shall not be excluded from disability coverage. We are proposing that the following definition of normal pregnancy conditions be included in the regulations under Section 34(5) of the Employment Standards Act.

- Definition of normal pregnancy conditions:

1. The following disabilities shall be considered attributable to normal pregnancy, and may be excluded from short and long-term disability plans:

   Mild morning sickness, fainting, dizziness, leg cramps, backache, mild venous complications of varicose veins, hemorrhoids, headache, insomnia, drowsiness, mild edema, mild increase in frequency of urination, mild mental upset.

2. Absences from employment for delivery, postnatal recovery and child care to which the employee is entitled under statute, contract, or by agreement with her employer may also be excluded from short and long-term disability plans, being attributable to normal pregnancy.

- Treatment of disabilities that occur while an employee is on pregnancy leave of absence

  It is standard practice to exclude disabilities that occur when the employee is not actively employed. In other words, employees who are on a leave of absence or lay-off are usually disqualified from disability benefits

for disabilities or accidents that occur during this absence from employment. We accept this practice with regard to unrelated sickness or disability that occurs when a woman is on a pregnancy leave of absence. We do not, however, accept this practice with regard to pregnancy-related disabilities that occur when a woman is on a pregnancy leave of absence. Provided that conception occurred during the period that an employee was actively employed, she should not be denied disability benefits for pregnancy-related complications. Her eligibility for disability benefits should be continued as for other pre-existing conditions, whether or not her disability coverage has been suspended or terminated during the pregnancy leave of absence.

- Treatment of all employee benefits during pregnancy leave of absence

Part XI of the Employment Standards Act is silent with regard to continuous participation in employee benefit plans during pregnancy leave. Section 35 states that, on resumption of employment, an employee must be reinstated with no loss of benefits accrued to the start of the leave, but it does allow the possibility of discontinuing all benefit plans during the leave itself. We are not suggesting that continuity of benefit plan participation should be mandatory, but we are concerned that pregnancy leaves of absence are sometimes treated differently and less favourably than other leaves of absence. If, for example, employees on educational leave of absence can choose to continue their benefit coverage, then employees on pregnancy leave of absence should probably have the same option. Certainly employees on a pregnancy leave of absence should have the same alternatives as those on a disability leave of absence. We appreciate that this discussion is beyond our terms of reference, but we are recommending reconsideration of Section 35 to ensure consistency with the intent of Section 34.

Recommendation No. 24 (22 - revised)

WE RECOMMEND THAT DURING ACTIVE EMPLOYMENT, DISABILITY DUE TO PREGNANCY COMPLICATIONS OR TO UNRELATED DISABILITY THAT OCCURS DURING PREGNANCY SHALL NOT BE EXCLUDED FROM SHORT AND LONG-TERM DISABILITY PLANS.

Recommendation No. 25 (new)

WE RECOMMEND THAT, WHERE CONCEPTION OCCURRED DURING THE PERIOD THAT THE EMPLOYEE WAS ACTIVELY EMPLOYED, PREGNANCY-RELATED DISABILITY THAT OCCURS DURING PREGNANCY LEAVE OF ABSENCE SHALL NOT BE EXCLUDED FROM SHORT AND LONG-TERM DISABILITY PLANS.

c Contribution Levels

i) Employee Contributions

We consider that there is no need to permit the application of sex-based differences in morbidity to employee contributions. But, as with life insurance plans, we recognize the necessity of allowing sex-based differences in contributions to voluntary employee-pay-all disability programs. It is expected that employee-pay-all disability plans will become more popular because, effective 1st January 1974, disability benefits under employer-pay-all or employer contributory plans became fully or partially taxable under revised income tax legislation.

Recommendation No. 26 (23)

WE RECOMMEND THAT EMPLOYEE CONTRIBUTION RATES TO SHORT AND LONG-TERM DISABILITY INSURANCE PLANS SHALL NOT VARY BY SEX: EXCEPT FOR VOLUNTARY EMPLOYEE-PAY-ALL PLANS, WHERE EMPLOYEE CONTRIBUTIONS SHALL BE ALLOWED TO VARY BY SEX ON AN ACTUARIAL BASIS ONLY.

ii) Employer Contributions

As with life insurance plans, we recognize that employer contribution rates to disability programs should be allowed to vary by sex to the extent that there are sex-based differences in premiums for the same level of benefits.

Recommendation No. 27 (24)

WE RECOMMEND THAT EMPLOYER CONTRIBUTION RATES TO SHORT AND LONG-TERM DISABILITY INSURANCE PLANS SHALL BE ALLOWED TO VARY BY SEX ON AN ACTUARIAL BASIS ONLY, AND ONLY IN ORDER TO ACHIEVE EQUAL BENEFITS.

D. Group Health, Medical (OHIP) and Dental Insurance Plans

Although OHIP and most extended health insurance programs allow either spouse to bear the responsibility of covering their family's health and medical insurance needs, some employers provide less or no contribution assistance where a female employee elects this responsibility. Further to our discussion of sex as an indicator of need, we reject the premise that male "breadwinners" deserve greater contribution assistance than female employees. Here again, the substitution of "head-of-household" and related criteria would be considered an evasion.

If costs arising out of pregnancy are excluded from extended health insurance programs, then we would consider that this practice is contrary to the intent of Part X.

a Access

Access to OHIP coverage cannot be denied on the basis of sex, but access to extended health coverage is sometimes denied to married women on the assumption that their husbands should take out coverage at their places of employment. Even when exceptions are made for wives with dependent or self-employed husbands, we consider that these restrictive practices are contrary to the intent of Part X.

As noted earlier in this chapter, we recognize that, in the area of extended health insurance, the principle that employed spouses should have complete freedom to choose which spouse takes out coverage may aggravate the practical problems of duplication. We do not consider that these administrative problems warrant waiving the foregoing principle. The duplication problem already exists, so we propose that it is the responsibility of employers and carriers to improve their existing techniques for preventing duplicate coverage, while retaining employee freedom of choice.

Recommendation No. 28 (25)

WE RECOMMEND THAT ACCESS TO AND PARTICIPATION REQUIREMENTS FOR HEALTH AND MEDICAL INSURANCE PLANS SHALL NOT VARY BY SEX OR BY "HEAD-OF-HOUSEHOLD" AND RELATED CRITERIA.

b Benefit Schedules

We are not aware of any sex-based differences in the benefits arising out of health or medical coverage, with one possible exception. OHIP does not exclude pregnancy costs, but costs arising out of pregnancy or pregnancy-related conditions are sometimes excluded from extended health insurance plans. These practices are rare, and we consider that, where such exclusions exist, they should be discontinued.

Recommendation No. 29 (26)

WE RECOMMEND THAT THE RIGHT TO REIMBURSEMENT OF COSTS UNDER EXTENDED HEALTH INSURANCE PLANS SHALL NOT VARY BY SEX, AND SUCH REIMBURSEMENT OF COSTS SHALL INCLUDE COSTS ARISING OUT OF PREGNANCY.

c Contribution Levels

i) Employee Contributions

We have recommended that neither employee nor dependency benefits under group health and medical insurance plans should vary on the basis of sex, so we consider that there is no need for any sex-linked variation in employee contribution rates, except in the rare circumstances where health insurance is provided on the employee-pay-all basis.

Recommendation No. 30 (27)

WE RECOMMEND THAT EMPLOYEE CONTRIBUTION RATES TO HEALTH AND MEDICAL INSURANCE PLANS SHALL NOT VARY BY SEX, EXCEPT FOR VOLUNTARY EMPLOYEE-PAY-ALL PLANS, WHERE EMPLOYEE CONTRIBUTIONS SHALL BE ALLOWED TO VARY BY SEX ON AN ACTUARIAL BASIS ONLY.

ii) Employer Contributions

Even where married women are given access to health and medical insurance programs, it is a common practice for employers to provide a lower rate of contribution assistance for married women than for married men.

For example, the employer might pay 50 per cent of the family premium for a married man, but only 50 per cent of the single premium for a married woman; thereby leaving her to make up the additional costs if she wishes, or has to take out the family coverage. We consider that these practices constitute sex-based differentials, whether they are based explicitly on sex, or on "head-of-household" and related criteria.

We would, however, allow employer contributions to vary by sex on an actuarial basis in those rare cases where sex-based differences in morbidity result in different premiums for the same level of benefits.

Recommendation No. 31 (28 - revised)

WE RECOMMEND THAT EMPLOYER CONTRIBUTION RATES TO HEALTH AND MEDICAL INSURANCE PLANS SHALL BE ALLOWED TO VARY BY SEX ON AN ACTUARIAL BASIS ONLY, AND ONLY IN ORDER TO ACHIEVE EQUAL BENEFITS.

SUMMARY OF RECOMMENDATIONS CONCERNING DISCRIMINATION ON THE BASIS OF SEX

<table>
<tr><th></th><th colspan="2" rowspan="2">PENSIONS</th><th colspan="3">I N S U R A N C E</th></tr>
<tr><th>LIFE</th><th>SHORT OR LONG-TERM DISABILITY</th><th>HEALTH OR MEDICAL</th></tr>
<tr><td>ACCESS AND ELIGIBILITY REQUIREMENTS</td><td colspan="2">Shall not vary by sex</td><td>Shall not vary by sex or "head-of household" and related criteria.</td><td>Shall not vary by sex or "head-of-household" and related criteria.</td><td>Shall not vary by sex or "head-of-household" and related criteria.</td></tr>
<tr><td rowspan="3">EMPLOYEE BENEFITS</td><td><u>Defined-benefit plans</u></td><td><u>Money-purchase, Profit-sharing, Composite & voluntary additional plans</u></td><td rowspan="3">Shall not vary by sex or "head-of household" and related criteria.</td><td rowspan="3">Shall not vary by sex or "head-of-household" and related criteria.</td><td rowspan="3">Shall not vary by sex.</td></tr>
<tr><td>Normal Service disability benefits shall not vary by sex</td><td>Benefit levels shall be allowed to vary by sex on an actuarial basis only</td></tr>
<tr><td colspan="2">Elective options, early and postponed benefits shall be allowed to vary by sex on an actuarial basis only</td></tr>
<tr><td>DEATH BENEFITS</td><td colspan="2">Access and level shall not vary by the sex of the employee</td><td>N/A</td><td>N/A</td><td>N/A</td></tr>
<tr><td rowspan="3">INCREASED BENEFITS FOR DEPENDENTS AND/OR SURVIVORS</td><td colspan="2">Access shall not vary by the sex of the employee</td><td rowspan="3">Shall not vary by the sex of the employee or "head-of-household" and related criteria.</td><td rowspan="3">Shall not vary by the sex of the employee or "head-of-household" and related criteria.</td><td rowspan="3">Shall not vary by the sex of the employee.</td></tr>
<tr><td><u>Defined-benefit plans</u></td><td><u>Money-purchase, Profit-sharing & composite plans</u></td></tr>
<tr><td>Benefit schedules shall not vary by the sex of the employee</td><td>Benefit levels shall be allowed to vary by the sex of the employee on an actuarial basis only</td></tr>
<tr><td>MISCELLANEOUS</td><td colspan="2">Age of eligibility for early, postponed, normal, compulsory, disability or death benefits, and vesting age shall not vary by sex.</td><td>Access and level of dependent coverage shall not vary by sex or "head-of-household" and related criteria.</td><td>Disability due to pregnancy complications or to unrelated disability that occurs during pregnancy shall not be excluded.</td><td>Reimbursement of costs under extended health programs shall not vary by sex, and reimbursement shall include costs arising out of pregnancy.</td></tr>
</table>

/continued.....

SUMMARY OF RECOMMENDATIONS CONCERNING DISCRIMINATION ON THE BASIS OF SEX

	PENSIONS	INSURANCE		
		LIFE	SHORT OR LONG-TERM DISABILITY	HEALTH OR MEDICAL
EMPLOYEE CONTRIBUTION RATES	Compulsory: Contribution rates shall not vary by sex Voluntary: Contribution levels shall not vary by sex	Shall not vary by sex, except for voluntary employee-pay-all plans or features, where they shall be allowed to vary on an actuarial basis only.	Shall not vary by sex, except for voluntary employee-pay-all plans or features, where they shall be allowed to vary on an actuarial basis only.	Shall not vary by sex or "head-of-household" and related criteria.
EMPLOYER CONTRIBUTION RATES	Shall be allowed to vary by sex on an actuarial basis only, and only in order to achieve equal benefits.	Shall be allowed to vary by sex on an actuarial basis only, and only in order to achieve equal benefits.	Shall be allowed to vary by sex on an actuarial basis only, and only in order to achieve equal benefits.	Shall be allowed to vary by sex on an actuarial basis only, and only in order to achieve equal benefits.

CHAPTER SIX:

RECOMMENDATIONS CONCERNING MARITAL STATUS

1. GENERAL

A. INTRODUCTION

Sex-based differentials in benefit programs are frequently linked to marital status in that married women are often treated differently from married men. This chapter assumes that sex-based discrimination has been covered, and deals exclusively with differentials based on marital status.

Before a discussion of the application of the specific recommendations to each type of plan, this section contains a review of the major issues that were raised in the consideration of marital status. In some cases, this review results in general recommendations that apply to all types of plan.

B. MAJOR AREAS OF CONCERN

a Actual Versus Assumed Dependency of Adults

Many employee benefit plans provide higher benefits for married than for single employees. Unlike variations in benefits by sex and age, this special treatment is not based on actuarial considerations of mortality or morbidity, but upon the assumption that married people have significantly greater needs in respect of their dependents.

As noted in the chapter on key issues, we prefer objective to assumed definitions of need, or else no reference to needs. Assumptions about need ignore the very real responsibilities that some employees have towards dependent adults other than their spouses, such as aged parents or handicapped siblings. Indeed, the dependency of these adults may be more "real" than the assumed dependency of spouses, if the "dependent" spouse is self-sufficient through employment or other sources of income.

We had little hesitation in recommending that assumptions of need based on sex should be prohibited, but there are two arguments in favour of not legislating against all differentials on the basis of marital status:-

i) Marital status is subject to change- Since marital status can change, all employees have some likelihood of needing the extra benefits provided to married employees, and a degree of equality of opportunity therefore exists.

ii) Marital status is an accepted indicator of need - The practice of concentrating employee benefits upon married employees is generally accepted, in recognition of the special inter-dependency of spouses. We respect the fact that, unlike the general questioning of sex-based needs, there has not been a concerted movement to question needs based on marital status. In the future, public opinion may favour the elimination of these assumed needs, but the members do not consider it socially feasible, at this time, to require the extension of adult survivor and dependency benefits to all categories of dependents.

b Single Employees with Dependent Children

In the case of increased benefits based on the presence of children, their dependency is clearly "real". So the question of actual versus assumed dependency does not arise.

We considered the growing numbers of "single" persons who have dependent children, whether those born out of wedlock, or because of the death of, or divorce or separation from, the other parent. To afford the same degree of protection to these children as that afforded to the children of a married person, we recommend that a "single" person with dependent children should be deemed to have married status for those aspects of employee benefit programs related to children. In other words, all employees with dependent children should have equal access to, and equal levels of, any increased or survivor benefits that are paid because of the existence of dependent children. Conversely, if eligibility is defined in terms of the children, then all natural and adopted children should be treated equally, without regard to the marital status of their parent/s.

Some briefs pointed out that our original recommendations concerning benefits for dependent and/or surviving children, implied that we wished to prohibit higher benefits for fully orphaned children than for children with one surviving parent. This was not our intent, and we accept that the greater need of orphaned children with no surviving parents, may be reflected in extra benefits for them. In these cases, the absence of parents is the deciding criteria, not their marital status.

We do not consider it necessary to impose a definition of dependent children that is independent of marital status, since well-accepted definitions, such as that provided under the Income Tax Act, are available. It is necessary to remind the reader that definitions of dependent children should also be independent of the sex of the employee. Hence, the Income Tax definitions should be applied cautiously. We do not accept the current practice of providing higher benefits to the parent who actually claims the child(ren) on his or her income tax return, because this tends to favour male employees in contravention of our "head-of-household" recommendation. Although there is an obvious income tax advantage when the spouse with the higher income claims any personal exemptions, we do not consider that their children should be considered totally independent of the other spouse's income for employee benefit purposes. If a definition similar to the definition in the Income Tax Act is used, then any parent who is eligible to claim children as personal exemptions should have access to benefits related to children, whether or not he or she actually claims them for income tax purposes.

Recommendation No. 32 (29 - revised)

WE RECOMMEND THAT IN DETERMINING ELIGIBILITY AND LEVEL OF EMPLOYEE AND INCREASED BENEFITS RELATED TO CHILDREN, ALL EMPLOYEES WITH DEPENDENT CHILDREN SHALL BE TREATED EQUALLY.

Recommendation No. 33 (29 - revised)

WE RECOMMEND THAT IN DETERMINING ELIGIBILITY AND LEVEL OF INCREASED OR SURVIVOR BENEFITS ALL DEPENDENT CHILDREN OF EMPLOYEES SHALL BE TREATED EQUALLY.

c "Common-Law" Spouses

In view of the controversy that our original recommendation generated, we gave the status of "common-law" spouses careful re-consideration. We have decided, however, to retain the original recommendation. We do concede the need for a more adequate explanation, and more guidance concerning acceptable definitions.

In reviewing the status of "common-law" spouses, we found that these relationships are granted limited recognition in

social security legislation, such as the Canada Pension Plan and the Workmen's Compensation Act of Ontario, if a couple have established a durable inter-dependency relationship similar to that of legally married spouses. The needs of "common-law" spouses are also recognized in some statutory pension plans for government employees, such as the Ontario Public Service Superannuation Fund, and in some private pension plans. This statutory recognition of common-law widows developed at a time when it was difficult to obtain a divorce. The original concern, therefore, was with couples who had lived together for a number of years and wished, but were unable to marry because of a legal bar on one side or the other. Our concern, today, is with the increasing number of couples who choose not to marry, even though there is no legal impediment. Given the relative ease of divorce, we see no reason why legal spouses should not be given precedence over "common-law" spouses. Where there is no legal spouse, however, we consider that "common-law" spouses should be deemed to have married status for all aspects of employee benefit programs.

We are aware that requiring recognition of "common-law" spouses can create administrative difficulties. For example, determining the beneficiary of survivor benefits in relation to claims from both a "common-law" spouse and a legal spouse can be a lengthy process, if the definition of the eligible claimant does not give clear precedence to one or the other. We do not consider, however, that these technical problems are significant enough to justify interference with the principle of equitable treatment for "common-law" spouses.

Probably the most difficult administrative question is the establishment of fair and workable definitions of "common-law" spouses. We do not consider it appropriate to impose a standard definition, but prefer to leave this determination flexible, according to the plan/s involved. Since "common-law" spouses do not have any independent legal status, a definition should be required to be included in all plans, where relevant. To assist those who will be developing definitions, Appendix IV includes some examples of definitions now in use. It should be noted that the definition used by OHIP for medical insurance varies significantly from the kind of definition applied under pension plans. Hence, a common definition may not be appropriate for all types of employee benefit plans, and the following guidelines should be interpreted as permissive.

In response to the queries contained in the submissions that we received, we are prepared to give some additional guidance concerning acceptable definitions. We appreciate the expressed concern that, unless benefits are restricted to one claimant only, the carrier may be liable for two payments

to two claimants. Definitions may therefore contain a provision limiting benefits to one spouse only, in order to prevent duplication. We also accept the common practice of recognizing "common-law" spouses only if there is no bar to legal marriage. In other words, the definition may give precedence to legal spouses vis-a-vis common-law spouses. Some of the briefs expressed the opinion that the contractual definitions of "common-law" used in employee benefit plans might conflict with statutes such as The Dependents Relief Act and The Divorce Act. Since we permit plan definitions to grant precedence to legal spouses, we do not anticipate that there will be any conflict. Similarly, we do not expect extensive litigation in this area.

Recommendation No. 34 (30 - revised)

WE RECOMMEND THAT IN DETERMINING ELIGIBILITY AND LEVEL OF BENEFITS, "COMMON-LAW" SPOUSES SHALL BE DEFINED IN THE TERMS OF THE PLAN AND SHALL HAVE THE SAME STATUS AS LEGALLY MARRIED SPOUSES. THESE DEFINITIONS MAY RESTRICT BENEFITS TO ONE BENEFICIARY, AND THEY MAY GRANT PRECEDENCE TO LEGAL SPOUSES.

II. TYPES OF PLAN

A. PENSION PLANS

Since some pension plans include dependency and survivor benefits, the foregoing discussion concerning both "common-law" spouses and the dependent children of single parents is clearly relevant. To summarize our conclusions: "common-law" spouses and dependent children of single parents should be afforded the same benefits as the spouses and children of legally married employees.

With regard to the needs of spouses, however, we distinguish between benefits for surviving spouses and increased benefits paid during the employee's lifetime because of the existence of a spouse. Surviving spouses' income benefits should be allowed to be based on marital status, but benefits first payable during the employee's lifetime should not be awarded on the basis of marital status as such.

a Access

We consider that pension plans should be available to all employees without difference in eligibility or participation requirements based on marital status.

Recommendation No. 35 (31)

WE RECOMMEND THAT ACCESS TO AND PARTICIPATION REQUIREMENTS FOR PENSION PLANS SHALL NOT VARY BY MARITAL STATUS.

b Benefit Schedules

i) Primary Employee Benefits

We consider that the primary pension benefits payable only to and in respect of an employee should not be based on his or her marital status. This would include both service and disability pensions, but not increased benefits payable to or in respect of dependents and/or survivors.

Recommendation No. 36 (32)

WE RECOMMEND THAT PRIMARY EMPLOYEE BENEFIT SCHEDULES UNDER PENSION PLANS SHALL NOT VARY BY MARITAL STATUS.

ii) Death Benefits

Some pension plans provide higher death benefits for married contributors than for single contributors. For example, two times the return of contributions instead of a single return of contributions. We consider that death benefits should not be based on the marital status of the employee at the time of death. Death benefits may be paid in a lump-sum or an installment form, but they do not include lifetime survivor income benefits.

Recommendation No. 37 (new)

WE RECOMMEND THAT DEATH BENEFITS UNDER PENSION PLANS SHALL NOT VARY BY MARITAL STATUS.

iii) Increased Benefits

Under the term increased benefits we include benefits that are first payable during an employee's lifetime in respect of his or her dependent/s. They are paid in addition to primary employee benefits, but they differ from, and are rarer than survivor benefits, which are first payable after an employee's death.

a) Dependent Children's Benefits

We consider that increased benefits based on the existence of dependent children should be independent of marital status. The provision of benefits for dependent children should not be deemed to discriminate against those without dependent children, provided that neither the definition of eligibility nor the level of benefit are related to the marital status of the parent.

Recommendation No. 38 (33)

WE RECOMMEND THAT THE AVAILABILITY AND LEVEL OF INCREASED BENEFITS PAYABLE TO THE EMPLOYEE UNDER PENSION PLANS BECAUSE OF THE EXISTENCE OF DEPENDENT CHILDREN SHALL NOT VARY BY THE MARITAL STATUS OF THE EMPLOYEE.

b) Dependent Adults' Benefits

The provision of increased benefits for spouses while the employee is alive could be considered to discriminate against those with adult dependents other than spouses, where the benefit is awarded on the basis of marital status as such. In other words, dependent spouses benefits should be based on an objective rather than an assumed definition of dependency. As with the definition of "common-law" spouse, we prefer to leave the definition of dependent spouse open for determination within the plan itself, rather than to impose our own definitions. The reader is reminded that dependency should not be defined on the basis of "head-of-household" or "primary breadwinner" criteria, because this would tend to unfairly favour men.

Recommendation No. 39 (34)

WE RECOMMEND THAT THE AVAILABILITY AND LEVEL OF INCREASED BENEFITS PAYABLE TO THE EMPLOYEE UNDER PENSION PLANS BECAUSE OF THE EXISTENCE OF DEPENDENT ADULTS SHALL NOT VARY BY THE MARITAL STATUS OF THE EMPLOYEE AS SUCH, BUT ONLY FOR DEPENDENCY AS DEFINED IN THE PLAN, FOR EXAMPLE, DEPENDENT SPOUSES.

iii) Survivor Benefits

We consider that survivor income benefits in respect of children should be independent of marital status but, further to the above discussion of actual and assumed dependency, we would permit the continuation of survivor income benefits in respect of adults to be based on marital status. There is wider public acceptance of assumed dependency where benefits are payable because of the employee's death than where the employee is alive. The elimination of surviving spouses' income benefits would be irresponsible if we could not simultaneously guarantee that genuinely dependent widows and widowers would not lose their coverage. To prevent confusion with our recommendation concerning death benefits, we are recommending that survivor income benefits be defined as lifetime income benefits only. Survivor income benefits shall not include income benefits that have been commuted to a lump sum, unless the lifetime income would be less than $25 per month.

We are aware that most, if not all, surviving spouses' income benefits are based on the marital status of the survivor, in the sense that these kinds of benefits are withdrawn upon re-marriage. The original rationale for remarriage provisions was the assumption that a widow would not continue to need a pension if she found a new "breadwinner" in the form of a second husband. The persistence of these provisions today is due to the considerable cost implications of unqualified lifetime pensions. Although we find these provisions objectionable, because they tend to force people into common-law relationships, we accept their continuance at this time for reasons of cost.

Recommendation No. 40 (35)

WE RECOMMEND THAT THE AVAILABILITY

AND LEVEL OF SURVIVOR BENEFITS PAYABLE UNDER PENSION PLANS BECAUSE OF THE EXISTENCE OF SURVIVING CHILDREN SHALL NOT VARY BY THE MARITAL STATUS OF THE EMPLOYEE.

Recommendation No. 41 (36)

WE RECOMMEND THAT THE AVAILABILITY AND LEVEL OF SURVIVOR BENEFITS PAYABLE UNDER PENSION PLANS, INCLUDING COMMUTED BENEFITS OF LESS THAN $25 PER MONTH, TO SURVIVING ADULTS SHALL BE ALLOWED TO VARY BY THE MARITAL STATUS OF THE EMPLOYEE, AND BY THE MARITAL STATUS OF THE SURVIVOR FOR REMARRIAGE PURPOSES.

c Contribution Levels

Since neither survivor nor increased benefits based on the existence of surviving or dependent children should vary on the basis of marital status, it is clear that there should be no possibility of varying either employee or employer contributions towards these dependent children's benefits on the basis of marital status. Extra contributions may be identified for children's benefits, of course, provided that they are not based on marital status.

i) Employee Contributions

We considered whether or not married employees should be expected to pay extra contributions where there are surviving or dependent spouses' benefits. Separate contributions for this kind of benefit are not necessarily identified and can be considered to be borne largely by the employer. Single people have a potential of becoming married and may thereby become eligible for surviving spouses' benefits. We, therefore, decided that it would be impracticable to require that married people carry the costs of their extra coverage. We recognize that this recommendation is inconsistent with our recommendation concerning employee contributions towards surviving spouses' benefits under life insurance plans.

Recommendation No. 42 (37)

WE RECOMMEND THAT EMPLOYEE CONTRIBUTION RATES TO PENSION PLANS SHALL NOT VARY BY MARITAL STATUS.

ii) Employer Contributions

Where pension plans do not include any benefits that are linked to marital status, then employer contribution rates should not vary by marital status. Where additional benefits are provided for married employees, however, we would permit the employer to carry the extra costs involved. Since separate costs are rarely identified for these kinds of benefits, we did not consider it advisable to require that employer contributions vary on the basis of marital status.

Recommendation No. 43 (38)

WE RECOMMEND THAT EMPLOYER CONTRIBUTION RATES TO PENSION PLANS SHALL NOT VARY BY MARITAL STATUS, EXCEPT UNDER DEFINED BENEFIT PENSION PLANS THAT PROVIDE SPOUSES' BENEFITS, WHERE EMPLOYER CONTRIBUTION RATES SHALL BE ALLOWED TO VARY BY MARITAL STATUS.

B. Life Insurance Plans

Although assumed needs arising out of the interdependency of spouses should continue to be recognized in survivor benefits, we interpret Part X as limiting the application of assumed needs criteria. This would appear to be immediately feasible in the area of life insurance, where greater need can be met by the provision of extra voluntary coverage by which employees may meet their needs.

If extra life insurance coverage is provided because of the existence of dependent children, then, further to our earlier discussion, we consider that it should be equally available, and equal, for single parents. Similarly, we propose that "common-law" spouses as defined in the plan should be treated in the same way as legal spouses in those cases where life insurance plans provide survivor income benefits.

a Access

We consider that life insurance plans should be equally available to all employees regardless of marital status. Eligibility and participation requirements should not be based on marital status.

Recommendation No. 44 (39)

WE RECOMMEND THAT ACCESS TO AND PARTICIPATION REQUIREMENTS FOR LIFE INSURANCE PLANS SHALL NOT VARY BY MARITAL STATUS.

b Benefit Schedules

i) Lump-sum Benefits

Most life insurance plans provide for lump-sum benefits, and the schedules of available benefits are sometimes higher for married employees than for single employees. We consider that each individual should be able to choose that level of available coverage that meets his or her particular needs, rather than being assigned to different schedules on the basis of his or her marital status. To prevent confusion with our recommendation concerning life-time survivor income benefits, it is our intention to include here lump-sum benefits payable in two or more installments.

Several briefs and inquiries asked whether or not the following schedules of life insurance would be acceptable:

Example A: Employee with no dependent children - one times salary.

Employee with one or more dependent children - three times salary.

Example B: Employee with no dependents - one times salary.

Employee with one dependent - two times salary.

Employee with two or more dependents - three times salary.

Example A would be acceptable, because additional benefits can be awarded in respect of dependent children, provided that there is no reference to the marital status of the parent/s. Care should be taken, however, to ensure against a definition of "dependent children" that de facto favours male employees in contravention of our "head-of-household" recommendation.

The acceptability, or otherwise, of Example B depends upon the treatment of adult dependents. If the employee can claim any adult as a dependent on the same basis as his or her spouse, then this kind of schedule would be acceptable. On the other hand, if the employee has to prove dependency for adult dependents other than wives and husbands, while spouses are covered automatically, regardless of dependency, then this kind of schedule would not be acceptable. Here again, sex bias must be avoided. In general, we recommend that employers provide a schedule of basic and voluntary additional life insurance coverage and allow the employee to choose.

Recommendation No. 45 (40 - revised)

WE RECOMMEND THAT LUMP-SUM BENEFIT SCHEDULES, INCLUDING LUMP-SUM BENEFITS PAID IN TWO OR MORE INSTALLMENTS, UNDER LIFE INSURANCE PLANS SHALL NOT VARY BY MARITAL STATUS.

ii) Survivor Income Benefits

Some life insurance plans include life-time income benefits for survivors. As with the same type of benefit under pension plans, we consider that the special inter-dependence of spouses may be recognized without being considered to discriminate unfairly against those without spouses. Where an income benefit is provided in respect of dependent children, however, we propose that there should be no variation on the basis of marital status.

Recommendation No. 46 (41)

WE RECOMMEND THAT THE AVAILABILITY AND LEVEL OF INCOME BENEFITS PAYABLE UNDER LIFE INSURANCE PLANS BECAUSE OF THE EXISTENCE OF SURVIVING CHILDREN SHALL NOT VARY BY THE MARITAL STATUS OF THE EMPLOYEE.

Recommendation No. 47 (42 - revised)

WE RECOMMEND THAT THE AVAILABILITY AND LEVEL OF INCOME BENEFITS PAYABLE UNDER LIFE INSURANCE PLANS, INCLUDING COMMUTED BENEFITS OF LESS THAN $25 PER MONTH, TO SURVIVING ADULTS SHALL BE ALLOWED TO VARY BY THE MARITAL STATUS OF THE EMPLOYEE, AND BY THE MARITAL STATUS OF THE SURVIVOR FOR REMARRIAGE PURPOSES.

iii) Dependents' Coverage

We do not consider that dependents' coverage for dependent children should be based on the marital status of the employee. Provided that "common-law" spouses may be recognized according to the definition in the plan, we accept the practice of confining access to coverage to the lives of spouses only, rather than any dependent adult/s.

Recommendation No. 48 (new)

WE RECOMMEND THAT THE AVAILABILITY AND LEVEL OF DEPENDENT LIFE INSURANCE COVERAGE UNDER LIFE INSURANCE PLANS FOR DEPENDENT CHILDREN SHALL NOT VARY BY THE MARITAL STATUS OF THE EMPLOYEE.

Recommendation No. 49 (new)

WE RECOMMEND THAT THE AVAILABILITY AND LEVEL OF DEPENDENT LIFE INSURANCE COVERAGE UNDER LIFE INSURANCE PLANS FOR DEPENDENT ADULTS SHALL BE ALLOWED TO VARY BY THE MARITAL STATUS OF THE EMPLOYEE.

c Contribution Levels

As with pensions, increased benefits based on the existence of dependent children should not vary by marital status, so there should be no need to vary contributions towards these benefits on the basis of marital status itself. However, contributions may vary in relation to the existence and number of dependent children.

i) Employee Contributions

We do not believe that employee contribution rates for lump-sum life insurance should vary on the basis of marital status. With regard to surviving spouses' income benefits, however, the present practice that married employees, but not single employees, pay for this extra coverage should be allowed. As noted above, this recommendation differs from our treatment of benefits that are linked to marital status under pension plans. In the case of pensions, present practice blends the extra cost from the employee's point-of-view. In the case of life insurance, the yearly rates can be more readily adjusted in response to an employee's change in marital status.

Recommendation No. 50 (43)

WE RECOMMEND THAT EMPLOYEE CONTRIBUTION RATES TO LIFE INSURANCE PLANS SHALL NOT VARY BY MARITAL STATUS, EXCEPT FOR SURVIVING SPOUSES' INCOME BENEFITS, WHERE EMPLOYEE CONTRIBUTION RATES SHALL BE ALLOWED TO VARY BY MARITAL STATUS.

ii) Employer Contributions

As with employee contribution rates we see no justification for marital status variations in employer contribution rates, except with regard to surviving spouses' income benefits. In this case it is reasonable that the employer contribution rates should be allowd to vary by marital status, in order to make up for the cost of providing this additional coverage when it occurs.

Recommendation No. 51 (44)

WE RECOMMEND THAT EMPLOYER CONTRIBUTION RATES TO LIFE INSURANCE PLANS SHALL NOT VARY BY MARITAL STATUS, EXCEPT FOR SURVIVING SPOUSES' INCOME BENEFITS WHERE THEY SHALL BE ALLOWED TO VARY BY MARITAL STATUS.

C. Disability Insurance Plans

Our recommendations concerning both short and long-term disability insurance are identical, and can therefore, be treated together.

The aim of disability insurance is to provide income maintenance when earnings are interrupted by sickness or accident. We do not consider that this need varies significantly enough by marital status to justify higher rates of income protection for married than for single employees.

In this area, we are recommending the complete elimination of differentials based on marital status, so that there is no need to guarantee equal treatment for "common-law" spouses, although there is a continuing need to ensure equal treatment for parents with dependent children with regard to increased benefits based on the existence of dependent children.

a Access

We consider that all employees should have access to disability insurance plans, where they are available, without regard to marital status. Eligibility and participation requirements should not be based on marital status.

Recommendation No. 52 (45)

WE RECOMMEND THAT ACCESS TO AND PARTICIPATION REQUIREMENTS FOR DISABILITY INSURANCE PLANS SHALL NOT VARY BY MARITAL STATUS.

b Benefit Levels

Disability insurance plans, particularly long-term disability plans, rarely provide greater levels of employee benefits for married employees than for single employees. We see no reason, therefore, why the few plans that do vary by marital status should not be required to meet the standards of the majority of disability insurance plans.

Recommendation No. 53 (46)

WE RECOMMEND THAT BENEFIT SCHEDULES UNDER DISABILITY INSURANCE PLANS SHALL NOT VARY BY MARITAL STATUS.

c Contribution Levels

i) Employee Contributions

Since benefit levels should not be allowed to vary by marital status, we see no reason to allow employee contribution rates to vary by marital status.

Recommendation No. 54 (47)

WE RECOMMEND THAT EMPLOYEE CONTRIBUTION RATES FOR DISABILITY INSURANCE PLANS SHALL NOT VARY BY MARITAL STATUS.

ii) Employer Contributions

Since benefit levels should not be allowed to vary by marital status, we see no reason to allow employer contribution rates to vary by marital status.

Recommendation No. 55 (48)

WE RECOMMEND THAT EMPLOYER CONTRIBUTION RATES FOR DISABILITY INSURANCE PLANS SHALL NOT VARY BY MARITAL STATUS.

D. Group Health, Medical (OHIP), and Dental Insurance Plans

a Access

As with all benefit programs, we recommend that access to health, medical (OHIP), and dental insurance plans should not vary by marital status, so that eligibility and participation requirements should not be based on marital status.

Recommendation No. 56 (49)

WE RECOMMEND THAT ACCESS TO AND PARTICIPATION REQUIREMENTS FOR HEALTH AND MEDICAL INSURANCE PLANS SHALL NOT VARY BY MARITAL STATUS.

b Benefit Levels

We are not aware of any differentiations by marital status in the coverage available to single and married employees themselves; and we are assuming that single women receive the same coverage as married women for health and medical costs arising out of pregnancy.

With respect to employees' dependents, however, there are differences in coverage based on marital status, since both OHIP and extended health insurance plans are based on insurance of the family unit. Provided that single parents and "common-law" spouses are granted equal treatment, we accept this feature of health and medical insurance plans.

Recommendation No. 57 (50)

WE RECOMMEND THAT THE TYPE AND LEVEL OF COVERAGE AVAILABLE FOR DEPENDENT CHILDREN UNDER HEALTH AND MEDICAL INSURANCE PLANS SHALL NOT VARY BY MARITAL STATUS.

Recommendation No. 58 (51)

WE RECOMMEND THAT THE TYPE AND LEVEL OF COVERAGE AVAILABLE FOR DEPENDENT ADULTS UNDER HEALTH AND MEDICAL INSURANCE PLANS SHALL BE ALLOWED TO VARY BY MARITAL STATUS.

c Contribution Levels

i) Employee Contributions

Both OHIP and extended health insurance plans set different contribution rates depending upon the type of coverage i.e. whether it is individual or family coverage. Provided that single parents and "common-law" spouses can take out family coverage, we consider it fair that "married" persons' contributions should be higher than those made by "single" contributors, since this differential reflects the number of people covered.

Recommendation No. 59 (52)

WE RECOMMEND THAT EMPLOYEE CONTRIBUTION RATES FOR DEPENDENT CHILDREN'S COVERAGE UNDER HEALTH AND MEDICAL INSURANCE PLANS SHALL NOT VARY BY MARITAL STATUS.

Recommendation No. 60 (53)

WE RECOMMEND THAT EMPLOYEE CONTRIBUTION RATES FOR SPOUSES' COVERAGE UNDER HEALTH AND MEDICAL INSURANCE PLANS SHALL BE ALLOWED TO VARY BY MARITAL STATUS.

ii) Employer Contributions

We consider that any contribution assistance provided by the employer should not vary by marital status in the sense that married employees should not be given a proportionately higher subsidy (e.g. 100%) than single employees (e.g. 50%). Contribution assistance should be equal, either in terms of the same flat dollar amount, or the same proportion of different contribution rates.

Recommendation No. 61 (54)

WE RECOMMEND THAT EMPLOYER CONTRIBUTION ASSISTANCE FOR HEALTH AND MEDICAL INSURANCE PLANS SHALL NOT VARY BY MARITAL STATUS. WHERE THERE ARE SPECIFIED PREMIUM RATES, HOWEVER, EQUAL CONTRIBUTION ASSISTANCE SHALL MEAN EITHER THE SAME FLAT DOLLAR AMOUNT, OR THE SAME PROPORTION OF DIFFERENT CONTRIBUTION RATES.

SUMMARY OF RECOMMENDATIONS CONCERNING DISCRIMINATION ON THE BASIS OF MARITAL STATUS

	PENSIONS	INSURANCE		
		LIFE	SHORT & LONG-TERM DISABILITY	HEALTH AND MEDICAL
GENERAL	All employees with dependent children shall be treated equally, and all dependent children of employees shall be treated equally. "Common-law" spouses shall be defined in the terms of the plan and shall have the same status as legally married spouses.			
ACCESS AND PARTICIPATION REQUIREMENTS	Shall not vary by marital status	Shall not vary by marital status	Shall not vary by marital status.	Shall not vary by marital status.
EMPLOYEE BENEFIT SCHEDULES	Primary employee benefits and death benefits shall not vary by marital status	Lump sum and installment benefits shall not vary by marital status.	Shall not vary by marital status.	Shall not vary by marital status.
INCREASED BENEFIT SCHEDULES BASED ON THE EXISTENCE OF DEPENDENT/SURVIVING CHILDREN	Shall not vary by marital status.	Increased and dependency benefits shall not vary by marital status.	Shall not vary by marital status.	Shall not vary by marital status.
INCREASED BENEFIT SCHEDULES BASED THE EXISTENCE OF ADULT DEPENDENTS	Shall be allowed to vary by marital status with regard to dependent spouses only.	Dependency benefits shall be allowed to vary by marital status.	Shall not vary by marital status.	Shall be allowed to vary by marital status.
INCREASED BENEFIT SCHEDULES BASED ON THE EXISTENCE OF SURVIVING ADULTS.	Lifetime income benefits shall be allowed to vary by marital status.	Lifetime income benefits shall be allowed to vary by marital status.	N/A	N/A
EMPLOYEE CONTRIBUTION RATES	Shall not vary by marital status.	Shall not vary by marital status except for surviving spouses' income benefits where they shall be allowed to vary by marital status.	Shall not vary by marital status.	Shall not vary by marital status, except for dependent spouses' benefits where they shall be allowed to vary by marital status.
EMPLOYER CONTRIBUTION RATES	Shall not vary by marital status except for surviving spouses' and dependent spouses' benefits where they shall be allowed to vary on the basis of marital status.	Shall not vary by marital status except for surviving spouses' income benefits where they shall be allowed to vary on the basis of marital status.	Shall not vary by marital status.	Shall not vary by marital status except in proportion to the differences in required premiums.

CHAPTER SEVEN:

RECOMMENDATIONS CONCERNING AGE

I. GENERAL

A. Introduction

Under the Ontario Human Rights Code, "age" is defined as between 40 and 65 years, because the main intent is to prevent discrimination against older workers, particularly with regard to hiring.

While respecting the definition of "age" under the Code, we do not consider this definition appropriate to employee benefit differentials. For example, if age-based discrimination were to be interpreted as differentials within the age range of 40 to 65, then the intent of Part X could be evaded by reducing or terminating benefits at age 39, because employees below the age of 40 would not be protected. To prevent this kind of evasion, and to protect the interests of younger employees, we are recommending a broader definition of "age".

Recommendation No. 62 (new)

WE RECOMMEND THAT, UNDER PART X OF THE EMPLOYMENT STANDARDS ACT, "AGE" BE DEFINED AS BETWEEN 18 AND 65 YEARS.

Before a discussion of the application of the specific recommendations to each type of plan, this section contains a review of the major issues that were raised in the consideration of age-based discrimination.

B. Major Areas of Concern

a Age-based Differences in Mortality

There are significant and inherent age-based differences in mortality. For example, the age-based mortality factor is clearly relevant in the area of life insurance, where it is more costly to provide the same level of coverage for older workers as for younger employees. In general, however, we do not accept the reflection of these cost differences based on age in either benefit schedules or employee contributions under life insurance plans. In most cases, therefore, the cost to the employee per unit of coverage and the amount of coverage available should not be based on age. We are recommending, however, an exception with regard to voluntary employee-pay-all plans, where the employee contribution rates should be allowed to vary by age on an actuarial basis.

We are also proposing an additional exception in the area of life insurance, which is based on the fact that age is a generally accepted indicator of need. For example, it is common practice to maximize life insurance protection at the young and middle ages when a person's estate is probably low and responsibilities tend to be high. This need for life insurance tends to decrease if the individual's other assets, such as pensions, increase. With regard to voluntary employee-pay-all life insurance plans, or features of plans, however, we are prepared to accept the practice of gradual reduction of benefit schedules with age.

b Age-based Differences in Morbidity

Since the incidence and duration of morbidity tends to increase with age, the cost of providing disability benefits tends to be higher for older employees than for younger employees. Although these age-based differences in morbidity may be applied to the overall costing of disability benefit programs, we do not consider that they should be reflected in either benefit levels, or employee contributions to contributory plans, on the basis that older employees should have the same opportunity to protect their current income as do younger employees.

As with all voluntary employee-pay-all plans, we are prepared to accept the continuance of actuarial differences in employee contributions to employee-pay-all disability programs, because the employer cannot make up any age-based differences in morbidity costs. In these types of plans, benefit schedules should not vary by age, but employee contributions should be allowed to vary by age.

c Age-related Cost Factors in Access to Pension Plans

Pension costs are related to the possible length of service before retirement, which affects the duration of investment. For this, and a variety of reasons, employers tend to be reluctant to allow new older employees to enrol in their pension plans. The result is the practice of specifying maximum eligibility ages below the age of 65 years.

For example, in 1970, in those jurisdictions with pension legislation (1), out of a total of 13,685 pension plans, 4,727 or 34.6 per cent had maximum age limits for entry below 65 years. Most of these plans (77.8 per cent) have maximum eligibility ages between 55 and 64 years (2).

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1. Ontario, Quebec, Alberta, Saskatchewan, and plans under Federal jurisdiction.

2. Information supplied by Statistics Canada, Pensions Section.

This means that older employees entering firms where these provisions are in effect cannot join the pension plan, even though they may have five to ten years of expected employment ahead of them.

As we have seen, denying eligibility to enter pension plans by specifying a maximum age may be based partly on cost considerations amongst others. We do not consider that this cost factor is significant enough to justify the continuation of this practice, because older employees have a continuing need for further accrual of their pension assets, particularly in the context of continuing inflation. We are, therefore, recommending equality of treatment and eligibility for all new employees, regardless of their age, with regard to maximum eligibility ages.

With regard to minimum eligibility ages, however, we are recommending an exception to the general principle of no differentiation on the basis of age. Because of the preferences of younger employees, and because of their higher turnover, it is fairly common to find minimum eligibility ages ranging from 20 to 30 years of age. We do not wish to interfere with these practices which, in our view, do not constitute age-based discrimination.

d The Consequences of Equality

It is apparent from the discussion above concerning morbidity, mortality, and the duration of pension investments, that the requirement of equal benefits on the basis of age will tend to increase costs of employing older persons. In the absence of any mechanism for passing these costs of aging to society-at-large, we recognize that the cost increase will fall on employers. It has been argued that increasing the cost of hiring or continuing to employ older workers might act as an additional barrier to their employment opportunity, both in finding and retaining employment.

This is a dilemma in pursuing equal treatment in one area for any group that is subject to discrimination in other areas. Will increased costs in the benefit area have the undesirable side-effect of aggravating inequality in the areas of hiring, promotion and job security? The argument against altering costs assumes that cost-considerations do influence these other areas, but we doubt that discrimination against older workers is based solely upon cost considerations. In any event, we are reassured by the offsetting effect of the equal employment opportunity provisions of the Human Rights Code.

e Compulsory Retirement before Age 65

In discussing differences based on age within pension plans, a clear distinction must be drawn between: (a) retirement date - i.e. the date at which employment ceases, and (b) pensionable date - i.e. the date at which pension is available.

The question of the right to continue employment up to the age of 65 is covered elsewhere in the Code, and is not within our terms of reference. However, the terms "pensionable date" and "retirement date" are often taken to be synonymous, so it is impossible to restrict the discussion to pensionable dates without reviewing the present law concerning retirement dates. Older workers' right to continued employment should be considered at a time when there is pressure to encourage these employees to leave the labour force as a facile solution to the youth unemployment problem.

With regard to retirement dates, we are satisfied that Section 4(1)(b) of the Human Rights Code protects older workers' employment, in that no person shall refuse to hire, or to continue to employ a person on the basis of his or her age. The Task Force has been advised that compulsory retirement dates, below the age of 65 are already prohibited, and the right to employment is safeguarded up to that age for those individuals who wish or need to stay in the labour force, and who are able to continue to perform their job satisfactorily.

With regard to pensionable dates, we recognize that these may be made available before age 65, provided that they do not involve compulsory retirement in contravention of Section 4(1)(b) of the Human Rights Code. For example, where a normal pensionable date is set at age 60, if an employee wishes and is able to continue employment for five years after this date up to age 65, he or she has the option to do so. In this case, retirement between 60 and 65 is at the employee's option only, and cannot be exercised by the unilateral action of the employer. The employer, of course, continues to have the right to terminate employment for cause.

We do not consider it necessary to propose principles as to the pension arrangements between an earlier normal pensionable date and age 65. Where the employee continues to work, the plan may provide for the pension benefits to continue to accrue, to be payable at the normal pensionable date, to be payable at age 65, or any other arrangement.

II. TYPES OF PLAN

A. Pension Plans

The age of entering a pension plan has a significant impact on the cost of providing pensions. We have decided, however, that this cost consideration should not be allowed to outweigh the older employees' need for access to pension plan membership. Throughout the discussion of our recommendations concerning pension plans, it should be recalled that compulsory retirement dates before the age of 65 years are prohibited in Ontario. As noted earlier, we accept age-based differentials in minimum eligibility ages.

a Access

We propose that new younger employees need not be required to join pension plans from the age of 18 years on. We therefore propose that age-based criteria be permitted in determining minimum eligibility ages.

Recommendation No. 63 (new)

WE RECOMMEND THAT MINIMUM ELIGIBILITY AGES FOR ACCESS TO PENSION PLANS SHALL BE ALLOWED TO VARY BY AGE.

We propose that new older employees should not be denied access to pension plan enrolment on the basis of their age, but should receive the same treatment as existing employees of the same age. This means that where the normal pensionable date is 65 years, then access to pension plans must be available up to the age of 65 years. Alternatively, if the normal pensionable date is below 65 years, then access should depend upon whether or not existing employees who have chosen postponed retirement may continue to accrue additional benefits for current years of service. We consider that:

i) if the existing employees who opt for late retirement continue to accrue pension benefits, then new employees of the same age should have access to the plan;

but

ii) if the existing employees who opt for late retirement cannot accrue additional pension benefits, then it is reasonable that new employees of the same age be denied access to the plan.

In all cases, the conditions of membership, such as whether enrolment is voluntary or compulsory, service

requirements, and contribution rates, should not vary on the basis of age. We recognize that the same service requirements may have a different impact on incoming employees, depending upon their age. For example, an eligibility requirement of five years will effectively cut off pension access for a new 62 year old employee, but not for a new 32 year old employee. We do not, however, consider that service requirements are within our terms of reference.

Recommendation No. 64 (55)

WE RECOMMEND THAT, SUBJECT TO UNIFORM SERVICE REQUIREMENTS AND A NORMAL PENSIONABLE DATE OF 65 YEARS, MAXIMUM ELIGIBILITY AGES BELOW THE AGE OF 65 YEARS FOR ACCESS TO PENSION PLANS SHALL NOT BE ALLOWED.

Recommendation No. 65 (56)

WE RECOMMEND THAT, WHERE NORMAL PENSION IS AVAILABLE BEFORE AGE 65, THEN MAXIMUM ELIGIBILITY AGES BELOW THE AGE OF 65 YEARS FOR ACCESS TO PENSION PLANS SHALL NOT BE ALLOWED EXCEPT WHERE EXISTING EMPLOYEES ABOVE THE NORMAL PENSIONABLE DATE CANNOT CONTINUE TO ACCRUE BENEFITS FOR CURRENT YEARS OF SERVICE.

b Benefit Schedules

i) Primary Employee Benefits

There are variations in pension benefit levels on the basis of age, due to the fact that accrual rates are allowed to vary by age. The extent of this variation is controlled by The Pension Benefits Act of Ontario, in order to ensure reasonably uniform accrual of benefits for each year of service. In view of these controls, we propose that primary employee pension benefit levels should continue to vary by age according to The Pension Benefits Act of Ontario.

Recommendation No. 66 (57 - revised)

WE RECOMMEND THAT PRIMARY EMPLOYEE BENEFIT SCHEDULES UNDER PENSION PLANS SHALL BE ALLOWED TO VARY BY AGE ACCORDING TO THE PENSION BENEFITS ACT OF ONTARIO.

ii) Death Benefits

We do not consider that death benefits, whether lump-sum, instalment, or guaranteed period, should be permitted to vary by the age of the employee at death.

Recommendation No. 67 (57 - revised)

WE RECOMMEND THAT THE FORMULAE FOR DEATH BENEFITS UNDER PENSION PLANS SHALL NOT VARY BY THE AGE OF THE EMPLOYEE.

iii) Increased Benefits

Similarly, we do not consider that increased income benefits payable under pension plans to or in respect of surviving dependents should be permitted to vary by the age of the employee at death.

Recommendation No. 68 (57 - revised)

WE RECOMMEND THAT THE FORMULAE FOR SURVIVOR BENEFITS UNDER PENSION PLANS SHALL NOT VARY BY THE AGE OF THE EMPLOYEE.

c Contribution Levels

i) Employee Contributions

We make a distinction between voluntary and required contributions, and consider that the former should be allowed to vary by age. In general, compulsory contributions should not be permitted to vary on the basis of age, with the exception of required contributions under money-purchase and profit-sharing pension plans. In these plans it is an accepted practice to allow employee contribution levels to increase with age as a means of approximating defined-benefit plans, and providing better pensions at retirement.

Recommendation No. 69 (58)

WE RECOMMEND THAT EMPLOYEE CONTRIBUTION RATES TO PENSION PLANS SHALL NOT VARY BY AGE EXCEPT FOR:

a) VOLUNTARY ADDITIONAL CONTRIBUTIONS; AND

b) COMPULSORY CONTRIBUTIONS UNDER MONEY-PURCHASE AND PROFIT-SHARING PLANS

WHICH SHALL BE ALLOWED TO VARY BY AGE.

ii) Employer Contributions

Employer contributions under money-purchase and profit-sharing pension plans based on age and service are subject to provincial legislation

and cannot vary at the employer's discretion. Under defined-benefit plans, employer contributions are determined on an actuarial basis in order to provide the plan benefits. There should be no problem in allowing continuation of existing procedures.

Recommendation No. 70 (59)

WE RECOMMEND THAT EMPLOYER CONTRIBUTIONS TO PENSION PLANS SHALL BE ALLOWED TO VARY BY AGE, ACCORDING TO THE PENSION BENEFITS ACT OF ONTARIO, AND ON AN ACTUARIAL BASIS.

d Timing of Benefits

i) Vesting of Pension Benefits and Contributions

The Pension Benefits Act of Ontario sets minimum standards of vesting at ten years' service and age 45 years. It could be argued that Part X of The Employment Standards Act requires that vesting should not be related to age. However, we consider that The Pension Benefits Act of Ontario should be given precedence over The Employment Standards Act because different vesting provisions in Ontario would conflict with the pension legislation's goal of inter-provincial uniformity.

Recommendation No. 71 (60)

WE RECOMMEND THAT VESTING OF PENSION BENEFITS AND/OR VESTING OF PENSION CONTRIBUTIONS SHALL BE ALLOWED TO VARY BY AGE ACCORDING TO THE PENSION BENEFITS ACT OF ONTARIO.

ii) Pensionable Dates

With regard to service pensions, we are aware of the increasing demand for lower normal or early pensionable dates, with either fully accrued or reduced pension. We are aware that an option is often provided which allows employees to receive a level income before and after government benefit payments commence. We do not consider that Part X was intended to interfere with this trend, and propose that service or disability pensions may be provided before the age of 65 years.

We do not consider that it was the intent of Part X to require that unreduced pensions available at a particular age or a limited age-range below the age of 65 years should be extended to all ages between 18 and 65 years. Any specified pensionable date/s below the age of 65 years should not be considered to discriminate on the basis of age as defined in The Employment Standards Act provided, of course, that it is recognized that compulsory retirement below the age of 65 years may be contrary to Section 4(1)(b) of the Code.

Disability pensions are clearly intended to meet the need of employees who are unable to complete the usual work life cycle, so it is reasonable that they should be available before the age of 65 years.

Recommendation No. 72 (61)

WE RECOMMEND THAT, PROVIDED THE RULES OF THE PENSION PLAN ARE CONSISTENTLY APPLIED TO ALL EMPLOYEES UNDER THE PLAN, AND PROVIDED THAT THEY ARE NOT CONDITIONAL UPON COMPULSORY RETIREMENT BELOW 65 YEARS, THE AGES FOR SERVICE, DISABILITY AND SURVIVOR PENSIONS OR DEATH BENEFITS SHALL BE ALLOWED TO VARY BELOW THE AGE OF 65 YEARS.

B. Life Insurance Plans

As mentioned earlier, age-based differences in mortality affect the design and costing of life insurance but we do not favour the application of these actuarial factors to either benefit levels or employee contribution rates. As with all benefit plans, where voluntary coverage is also provided on an employee-pay-all basis, we would allow actuarial differences in the employees' contribution levels on the basis of their ages.

Apart from any cost consideration, the practice of reducing the level of coverage with increasing age is based on the argument that older employees do not need as much insurance protection as younger employees. With regard to compulsory coverage, we question this assumption that life insurance needs invariably decline with age, since not all employees have had the opportunity

to build up offsetting private assets. With regard to voluntary coverage, whether employee-pay-all or not, we are prepared to permit the practice of gradual reduction of available benefit levels at higher ages.

a Access

Although we are not aware of exclusions on the basis of age, we propose that age-based eligibility and participation requirements should be prohibited, where they apply to either new or existing employees.

Recommendation No. 73 (62)

WE RECOMMEND THAT, SUBJECT TO UNIFORM SERVICE REQUIREMENTS, ACCESS TO LIFE INSURANCE PLANS SHALL NOT VARY BY AGE.

b Benefit Schedules

i) Basic Benefits

As explained in the introduction, we are recommending an exception with regard to life insurance coverage that is provided on a voluntary, employee-pay-all basis. Under these circumstances, the available benefit limits should be allowed to vary by age.

Recommendation No. 74 (63 & 64 - revised)

WE RECOMMEND THAT BENEFIT SCHEDULES UNDER LIFE INSURANCE PLANS OR FEATURES OF PLANS SHALL NOT VARY BY THE AGE OF THE EMPLOYEE, EXCEPT FOR VOLUNTARY, EMPLOYEE-PAY-ALL PLANS OR FEATURES OF PLANS, WHERE BENEFIT SCHEDULES SHALL BE ALLOWED TO VARY BY THE AGE OF THE EMPLOYEE.

ii) Supplementary Disability Benefits

In addition to basic life insurance benefits, some group insurance plans provide for supplementary benefits in the event of disability. We are not aware of any age-based differentials under accidental death and dismemberment (A D & D) or double indemnity supplements. It is common practice, however, to limit the availability of premium waiver benefits to employees who are disabled before the age of 60 years. Similarly, installment disability benefits are rarely made available to employees over the age of 60 years. We consider that access to both premium waivers and installment benefits should be extended to the age of 65 years, and that the level of such benefits should not vary by age.

Recommendation No. 75 (new)

WE RECOMMEND THAT ACCESS TO AND THE LEVEL OF SUPPLEMENTARY DISABILITY BENEFITS UNDER LIFE INSURANCE PLANS SHALL NOT VARY BY THE AGE OF THE EMPLOYEE.

c Contribution Levels

i) Employee Contributions

Apart from the exception of voluntary employee-pay-all plans, we do not consider that employee contribution rates per unit of life insurance coverage should vary by age where there are also employer contributions. This means that under most life insurance plans, neither benefit schedules nor employee contribution rates should vary by age. Under voluntary, employee-pay-all plans, however, both the available levels of benefits and the employee purchase cost should be allowed to vary by age.

Recommendation No. 76 (65)

WE RECOMMEND THAT EMPLOYEE CONTRIBUTION RATES TO LIFE INSURANCE PLANS SHALL NOT VARY BY THE AGE OF THE EMPLOYEE, EXCEPT UNDER VOLUNTARY EMPLOYEE-PAY-ALL PLANS, OR FEATURES OF PLANS, WHERE EMPLOYEE CONTRIBUTION RATES SHALL BE ALLOWED TO VARY BY THE AGE OF THE EMPLOYEE, BOTH IN RELATION TO THE BENEFIT SCHEDULE AVAILABLE, AND ON AN ACTUARIAL BASIS.

ii) Employer Contributions

In view of the cost-differences involved in providing the same levels of coverage to all employees on the basis of age, it is necessary that employer contributions be allowed to vary accordingly.

Recommendation No. 77 (66 & 67 - revised)

WE RECOMMEND THAT EMPLOYER CONTRIBUTION RATES TO LIFE INSURANCE PLANS SHALL BE ALLOWED TO VARY BY AGE ON AN ACTUARIAL BASIS ONLY, AND ONLY IN ORDER TO ACHIEVE EQUAL BENEFITS.

C. Short-Term Disability Insurance Plans

We are not aware of any age-based differentials in these types of plans. The only difference would be either different benefit levels or employee contribution rates due to age-based differences in morbidity. As explained earlier, we consider that the application of such actuarial factors would constitute discrimination on the basis of age, except with regard to employee contributions towards voluntary employee-pay-all plans or features of plans.

a Access

Denial of access to short-term disability insurance plans would, in our opinion, be in violation of the intent of Part X of The Employment Standards Act.

Recommendation No. 78 (68)

WE RECOMMEND THAT, SUBJECT TO UNIFORM SERVICE REQUIREMENTS, ACCESS TO SHORT-TERM DISABILITY INSURANCE PLANS SHALL NOT VARY BY AGE.

b Benefit Schedules

On the premise that the need to protect current income does not vary by age, we correspondingly propose that short-term disability benefit schedules should not be permitted to vary by age.

Recommendation No. 79 (69)

WE RECOMMEND THAT BENEFIT SCHEDULES UNDER SHORT-TERM DISABILITY INSURANCE PLANS SHALL NOT VARY BY AGE.

c Contribution Levels

i) Employee Contributions

Other than where short-term disability insurance is provided on a voluntary employee-pay-all basis, we do not believe that it is necessary to recognize age-based differences in employee contribution rates.

Recommendation No. 80 (70)

WE RECOMMEND THAT EMPLOYEE CONTRIBUTION RATES TO SHORT-TERM DISABILITY INSURANCE PLANS SHALL NOT VARY BY AGE, EXCEPT FOR VOLUNTARY EMPLOYEE-PAY-ALL PLANS, WHERE THEY SHALL BE ALLOWED TO VARY BY AGE ON AN ACTUARIAL BASIS ONLY.

ii) Employer Contributions

As with group life insurance, it is necessary to allow employer contributions to vary by age to make up any additional costs due to age-based differences in morbidity.

Recommendation No. 81 (71)

WE RECOMMEND THAT EMPLOYER CONTRIBUTION RATES TO SHORT-TERM DISABILITY INSURANCE PLANS SHALL BE ALLOWED TO VARY BY AGE ON AN ACTUARIAL BASIS ONLY, AND ONLY IN ORDER TO ACHIEVE EQUAL BENEFITS.

D. Long-Term Disability Insurance Plans

In general, we do not favour the application of age-based differences in morbidity to benefit levels or employee contribution rates under long-term disability insurance plans.

a Access

As with some pension plans, a few long-term disability insurance plans have maximum eligibility ages below the age of 65 years. We consider that older employees have an equal need for insurance protection against the risk of disability, and that new employees should not be denied the coverage that is available to existing employees.

In most cases, this means that access should not be denied before the age of 65 years. Where the normal pensionable date is set below 65 years, however, access for new older employees should be based on the treatment of existing employees who have chosen postponed retirement. If these existing employees no longer have access to long-term disability insurance coverage, then it would be unreasonable to require access for new employees of the same age.

Recommendation No. 82 (72)

WE RECOMMEND THAT, SUBJECT TO UNIFORM SERVICE REQUIREMENTS AND A NORMAL PENSIONABLE DATE OF 65 YEARS, ACCESS TO LONG-TERM DISABILITY INSURANCE PLANS SHALL NOT VARY BY AGE, INCLUDING THE SPECIFICATION OF MAXIMUM ELIGIBILITY AGES BELOW 65 YEARS.

Recommendation No. 83 (73)

WE RECOMMEND THAT, WHERE NORMAL PENSION IS AVAILABLE BEFORE AGE 65, ACCESS TO LONG-TERM DISABILITY INSURANCE PLANS SHALL NOT VARY BY AGE, EXCEPT WHERE EXISTING EMPLOYEES ABOVE THE NORMAL PENSIONABLE DATE DO NOT HAVE CONTINUING COVERAGE, WHEN MAXIMUM ELIGIBILITY AGES BELOW THE AGE OF 65 YEARS SHALL BE ALLOWED.

b Termination of Coverage for Existing Employees

Long-term disability coverage is sometimes withdrawn after a certain age, on the basis that disability payments under a pension plan, early retirement, or some other offsetting benefits are probably available as an alternative. Another reason for this practice is the administrative difficulty of distinguishing between disability and retirement at older ages. We understand that the practice of terminating coverage below the age of 65 is rare and, in view of this, we consider that it would constitute a regressive step to permit the expansion of this practice as long-term disability plans become more popular. If retirement on a normal pension is available before age 65 years, then we consider it is reasonable to terminate long-term disability coverage at this time.

Recommendation No. 84 (74)

WE RECOMMEND THAT LONG-TERM DISABILITY INSURANCE COVERAGE SHALL NOT BE TERMINATED BEFORE AGE 65, OR BEFORE NORMAL PENSIONABLE DATE WHICHEVER IS EARLIER.

c Benefit Schedules

In some cases, the level of long-term disability benefits reduces on the basis of age, but we understand that this is a very rare practice. In some cases the benefits may be payable for a maximum time period, such as 5 years, or until pension benefits are available. The fact that long-term disability benefits terminate before age 65, or before normal

retirement date should not be considered a violation, unless the termination is based on age as such.

Recommendation No. 85 (75)

WE RECOMMEND THAT BENEFIT SCHEDULES UNDER LONG-TERM DISABILITY INSURANCE PLANS SHALL NOT VARY BY AGE.

d Contribution Levels

i) Employee Contributions

Since benefit schedules shall not vary by age, we see no reason to permit contribution levels to vary by age, except under voluntary employee-pay-all long-term disability plans.

Recommendation No. 86 (76)

WE RECOMMEND THAT EMPLOYEE CONTRIBUTION RATES TO LONG-TERM DISABILITY INSURANCE PLANS SHALL NOT VARY BY AGE, EXCEPT UNDER VOLUNTARY EMPLOYEE-PAY-ALL PLANS, WHERE THEY SHALL BE ALLOWED TO VARY BY AGE ON AN ACTUARIAL BASIS ONLY.

ii) Employer Contributions

Employer contributions should be allowed to vary by age to the extent that they are required to pay for additional costs arising out of age-based differences in morbidity.

Recommendation No. 87 (77)

WE RECOMMEND THAT EMPLOYER CONTRIBUTION RATES TO LONG-TERM DISABILITY INSURANCE PLANS SHALL BE ALLOWED TO VARY BY AGE ON AN ACTUARIAL BASIS ONLY, AND ONLY IN ORDER TO ACHIEVE EQUAL BENEFITS.

E. Health and Medical Insurance Plans

We are not aware of any age-based differentials in health and medical insurance programs.

Recommendation No. 88 (78)

WE RECOMMEND THAT ACCESS, BENEFIT SCHEDULES, AND EMPLOYEE CONTRIBUTION RATES UNDER HEALTH AND MEDICAL INSURANCE PLANS SHALL NOT VARY BY AGE.

SUMMARY OF RECOMMENDATIONS RE DISCRIMINATION ON THE BASIS OF AGE

PROVISION	PENSION	INSURANCE			
		LIFE	SHORT-TERM DISABILITY	LONG-TERM DISABILITY	HEALTH & MEDICAL
ACCESS — Minimum Eligibility Ages	Shall be allowed to vary by age	N/A	N/A	N/A	N/A
ACCESS — Maximum Eligibility Ages	Shall not vary by age, except where there is a normal pensionable date below 65. In this case, shall be allowed to vary by age if existing employees above the normal pensionable date cannot continue to accrue benefits for current years of service.	Shall not vary by age	Shall not vary by age	Shall not vary by age, except where there is a normal pensionable date below 65. In this case, shall be allowed to vary by age if existing employees above the normal pensionable date do not have continuing coverage.	Shall not vary by age
BENEFIT SCHEDULES	Primary employee benefit schedules shall be allowed to vary by age according to the P.B.A.	Shall not vary by age, except for voluntary, employee-pay-all plans	Shall not vary by age	Shall not vary by age	Shall not vary by age
	Death and Survivor benefit schedules shall not vary by age	Supplementary disability benefits shall not vary by age			
VESTING	Shall be allowed to vary by age according to The Pension Benefits Act	N/A	N/A	N/A	N/A
PENSIONABLE DATES	Shall be allowed to vary by age	N/A	N/A	N/A	N/A
EMPLOYEE CONTRIBUTION RATES	Shall not vary by age, except for money-purchase and profit-sharing plans, and voluntary additional contributions	Shall not vary by age, except for voluntary employee-pay-all plans/features, where they shall be allowed to vary both in relation to the benefit schedule available, and on an actuarial basis.	Shall not vary by age, except for voluntary employee-pay-all plans/ features, where they shall be allowed to vary on an actuarial basis only	Shall not vary by age except for voluntary employee-pay-all plans/ features, where they shall be allowed to vary on an actuarial basis only.	Shall not vary by age

/continued...

SUMMARY OF RECOMMENDATIONS RE DISCRIMINATION ON THE BASIS OF AGE

PROVISION	PENSION	INSURANCE				
		LIFE		SHORT-TERM DISABILITY	LONG-TERM DISABILITY	HEALTH & MEDICAL
		Compulsory plans/features	Voluntary plans/features			
EMPLOYER CONTRIBUTION RATES	Shall be allowed to vary by age according to The Pension Benefits Act	Shall be a allowed to vary by age on an actuarial basis only, and only in order to achieve equal benefits	Shall be allowed to vary by age.	Shall be allowed to vary by age on an actuarial basis on only, and only in order to achieve equal benefits	Shall be allowed to vary by age on an actuarial basis only, and only in order to achieve equal benefits	Shall not vary by age

N.B. "Age" is defined as between 18 and 65 years of age.

CHAPTER EIGHT:

RECOMMENDATIONS CONCERNING ADMINISTRATION

1. Introduction

In addition to the substantive issues raised in the briefs that we reviewed, several submissions dealt with administrative implications of Part X. This chapter addresses itself to the major administrative issues only, because we have chosen to refer detailed questions to the Minister of Labour.

Part X applies only to employer-sponsored benefit programs, but benefits are sometimes provided through membership in a professional association or trade union. Although this area of benefit design is not within our terms of reference, we understand that Sections 4a(1) and 4a(2) of the Ontario Human Rights Code, which prohibit discrimination against members of professional associations or trade unions, apply to benefit plans offered to members. For the sake of consistency, we would like to suggest that these provisions will be interpreted according to the eventual interpretation of Part X.

2. Administering Agency

In our Interim Report, we recommended that, "The Minister of Labour consider the advisability of transferring the administration of Section 4(1)(g) from the Ontario Human Rights Commission to The Employment Standards Branch". The introduction of Part X as part of Bill 134 to amend The Employment Standards Act implemented this recommendation. An advantage of The Employment Standards Act is that it can be enforced by routine audits in addition to employee complaints.

We would like to repeat our recommendation that the Minister of Labour explore further the possibility of co-operative enforcement by the Pension Commission of Ontario, the Office of the Superintendent of Insurance, and OHIP through their existing reporting and/or licensing authorities.

Recommendation No. 89 (84)

WE RECOMMEND THAT THE MINISTER OF LABOUR APPROACH RELEVANT AGENCIES WITHIN THE PROVINCIAL GOVERNMENT TO EXPLORE THE ADVISABILITY OF COMPLEMENTARY ENFORCEMENT OF PART X OF THE EMPLOYMENT STANDARDS ACT.

3. Effective Date

In our Interim Report we proposed April 1st, 1975, as the target date on which the amended Section 4(1)(g) be proclaimed in effect. We were frankly over-optimistic in view of the high level of response to our first report, and the time required to develop detailed regulations. We anticipate that the regulations will be ready soon after the publication of this final report. In order to give all interested parties adequate time to make the required adjustments, we would suggest that Part X be proclaimed in effect three months from the date when the regulations are gazetted.

Recommendation No. 90 (new)

WE RECOMMEND THAT PART X OF THE EMPLOYMENT STANDARDS ACT BE PROCLAIMED IN EFFECT THREE MONTHS AFTER THE REGULATIONS UNDER SECTION 34(5) HAVE BEEN GAZETTED, OR OCTOBER 1ST, 1975, WHICHEVER IS EARLIER.

4. Implementation Schedule

Although we are recommending one effective date for Part X as a whole, we accept the briefs from both management and labour that asked for "staggered" enforcement where collective agreements or insurance contracts are in effect. We appreciate that the imposition of statutory re-organization during the term of a collective agreement could have a disruptive effect on industrial relations in the province. We are therefore recommending special, though limited, protected status for all contractual plans according to the following schedule:-

i) New plans and non-insured or non-contractual plans without an expiry date - Part X to be effective on the date of proclamation.

ii) Existing plans under group policies and contracts other than those under collective agreements - Part X to be effective one year from the date of proclamation, or the next renewal date, whichever is earlier.

iii) Existing plans under collective agreements - Part X to be effective two years from the date of proclamation, or the next expiry date, whichever is earlier.

Recommendation No. 91 (new)

WE RECOMMEND THAT REGULATIONS BE DEVELOPED UNDER SECTION 34(5)(c) OF THE EMPLOYMENT STANDARDS ACT TO PROVIDE FOR SUSPENDED APPLICATION OF PART X AS FOLLOWS:-

a) EXISTING PLANS UNDER CONTRACTS TO COMPLY ONE YEAR FROM THE DATE OF PROCLAMATION, OR THE NEXT RENEWAL DATE, WHICHEVER IS EARLIER.

b) EXISTING PLANS UNDER COLLECTIVE AGREEMENTS TO COMPLY TWO YEARS FROM THE DATE OF PROCLAMATION OR THE NEXT EXPIRY DATE, WHICHEVER IS EARLIER.

5. Direction of Equalization and Protection of Existing Benefits

a Benefits other than pensions

This proved to be the most controversial aspect of our Interim Report. In that report we recommended that all benefit plans other than pensions be equalized up to the higher conditions, rather than reduced to the lower conditions. Although we recognized the need for some flexibility in re-organization by proposing individual exemptions, this recommendation attracted considerable criticism in the second set of briefs that we received. We have reconsidered this recommendation in light of two considerations. Firstly, the power of precedent will tend to protect existing benefits. We are confident that a combination of employee resistance and employer responsibility will prevent cancellation or downward equalization. Secondly, the economic picture in Ontario has worsened since the time of our first report and employees are therefore more concerned with direct wages than with employee benefits. Also, employers are less able to absorb the cost-impact of upward equalization. We did, however, consider it necessary to retain the principle of upward equalization in the "basic" benefit area of premium assistance for health and medical insurance, including dental coverage. Employees may well accept reduction in long-term benefits, such as pensions; but we do not expect that they should have to accept any reduction in the more immediate benefit area of health insurance.

Recommendation No. 92 (82 - revised)

WE RECOMMEND THAT NO EMPLOYER SHALL REDUCE THE HEALTH, MEDICAL, OR DENTAL BENEFITS OF AN EMPLOYEE IN ORDER TO COMPLY WITH PART X OF THE EMPLOYMENT STANDARDS ACT.

b Pension Benefits

i) Pensionable Dates

It has been suggested that, where pension plans have different pensionable dates for men and women, the lower pensionable date should be taken as the new uniform pensionable date for all employees. We are concerned that a lowering of normal pensionable dates might induce employees to leave the labour force earlier than they had intended. We are aware that many employees wish to continue earning up to age 65, and they also desire the larger pension benefits that may result. We do not therefore consider it appropriate to recommend any

requirements concerning the direction of the equalization of pensionable dates.

Recommendation No. 93 (79)

WE RECOMMEND THAT WHERE PENSIONABLE DATES ARE CHANGED IN ORDER TO COMPLY WITH PART X THEY SHALL BE ALLOWED TO VARY ACCORDING TO THE NEW TERMS OF THE PENSION PLAN.

ii) Accrued Benefits

We consider it necessary to ensure that existing pension benefit accruals be protected. In other words, accrual up to the effective date of Part X should be preserved, so that any new accrual rates will not apply retroactively.

In addition, we propose that female pension plan members should not lose their right to retire at an earlier pensionable date than men, where the plan currently provides for this. New pensionable dates should apply immediately to new pension plan members, but it would be disruptive for many incumbents to change their expected pensionable dates. We are therefore proposing that the right to early retirement with regard to service before the proclamation of Part X should be preserved for all plan members.

Recommendation No. 94 (80)

WE RECOMMEND THAT THE ACTUARIALLY DETERMINED VALUE OF THE PENSION BENEFITS THAT ARE ACCRUED AT THE EFFECTIVE DATE OF PART X, AND THE RULES CONCERNING THE PAYMENT THEREOF, SHALL BE PRESERVED AND APPLIED UNDER TERMS NOT LESS FAVOURABLE THAN THOSE IN FORCE IMMEDIATELY BEFORE THE EFFECTIVE DATE OF PART X.

iii) Future Benefits

With regard to pension accruals in the future, on the other hand, we do not consider it feasible to require the continuation of existing accrual rates, even in those circumstances where they would be more favourable than the new accrual rates. In other words, the new accrual rates should be allowed to apply on the effective date of Part X so that the old accrual rates may not continue in the future. For example, widows' benefits may be removed or reduced, rather than be extended to widowers. Similarly, where women had higher accrual rates than men, that were associated with earlier pensionable dates, these more favourable rates need not be extended to men and they may be reduced for women in the future.

Conversely, new and more favourable benefits need not be applied to accrued pension benefits. The following recommendation follows the precedent established by the Pension Benefits Act of Ontario which, while protecting past accruals, did not

require the new pension rules to apply retroactively to pension credits accrued before the effective date of the legislation. In other words, where a new benefit such as a widower's pension is introduced, it need only be paid in respect of future accruals and need not be paid in respect of existing accruals.

Recommendation No. 95 (81)

WE RECOMMEND THAT PENSION BENEFITS THAT ACCRUE AFTER THE EFFECTIVE DATE OF PART X SHALL BE ALLOWED TO CHANGE ACCORDING TO THE NEW TERMS OF THE PENSION PLAN.

6. Status of Excluded Employees

Several briefs that we received were concerned about the status of existing employees who had been denied access to plans, or features of plans, because of their age, sex, or marital status. Where access was optional and an employee decided not to join the plan, or opt for the higher benefit, then we see no reason why he or she should be given a "second chance". Where access was denied, however, we consider it only fair that employers be obliged to re-open enrollment to previously excluded groups of employees. We do not think that existing employees should be required to opt in, but they should be given the option that was previously denied to them.

Recommendation No. 96 (new)

WE RECOMMEND THAT WHERE EMPLOYEES WERE DENIED ACCESS TO PLANS, OR FEATURES OF PLANS, BECAUSE OF THEIR SEX, MARITAL STATUS OR AGE, EMPLOYERS SHALL PROVIDE ACCESS ON A VOLUNTARY BASIS.

CHAPTER NINE

SUMMARY OF CHANGES SINCE THE INTERIM REPORT

1. INTRODUCTION

This chapter will not detail all of the changes that we have made since we published our Interim Report. Many of the changes are of an "editorial" nature, in that they are designed to clarify areas of misunderstanding, or answer some of the arguments in the briefs that we received. This chapter merely highlights any changes of a substantial nature.

2. CHAPTER 4: GENERAL RECOMMENDATIONS

a) Voluntary Employee-Pay-All Plans (Recommendation Nos.1 and 2)

Our recommendation concerning voluntary employee-pay-all plans has been amended to allow for the exception of life insurance and age-based differentials. The basic recommendation remains the same, i.e. although benefit levels under these kinds of plans must be equal on the basis of age and sex, employee contributions can vary actuarially. A new recommendation has been added to make an exception of voluntary employee-pay-all life insurance plans. Here, both the benefit levels and the employee contribution rates may vary on the basis of age.

3. CHAPTER 5: RECOMMENDATIONS CONCERNING SEX.

a) Death Benefits Under Pension Plans (Recommendation No.9)

In this chapter, and throughout the report, we were remiss in not making explicit recommendations concerning death benefits under pension plans. A new recommendation has been added that makes it clear that these benefits should not vary by the sex of the employee.

b) Dependents Life Insurance (Recommendation No. 19)

Several briefs drew our attention to the fact that we omitted to make any recommendations concerning sex-based differences in dependents life insurance. A recommendation has been added to prohibit sex discrimination in either access to or the level of life insurance coverage for dependents.

c) Pregnancy Benefits (Recommendation Nos. 24 & 25)

Several clarifications were required with regard to our original recommendation concerning pregnancy benefits.

Our distinction between absence due to normal pregnancy and absence due to pregnancy complications or coincidental sickness

remains. We have, however, proposed a single definition of normal pregnancy complications for inclusion in the regulations under Part X.

We are also recommending that, where conception occurred during the period that the employee was actively employed, then pregnancy-related disabilities should be eligible for disability benefits, even if the disability occurs during pregnancy leave of absence.

When an employee is on pregnancy leave of absence, continuity of benefit plan participation is sometimes suspended, or provided on less favourable terms, than when an employee is on another leave of absence from employment. We suggest that the pregnancy leave provision of the Employment Standards Act, Section 35, be reviewed to ensure equitable treatment in this regard.

4. CHAPTER SIX: RECOMMENDATIONS CONCERNING MARITAL STATUS

a) Orphans (Recommendation Nos. 33, 40 and 46)

Our original recommendation concerning equal treatment of "married" and "single" parents, and their dependent children, implied that plans could not provide higher benefits for fully orphaned children than for children with one surviving parent. This was not our intent, and the recommendations have been re-worded to allow for extra benefits for orphans.

b) "Common-law" Spouses (Recommendation No. 34)

Although we have resisted the general requests for a single definition of "common-law" spouses, we have delineated some permissive ground rules concerning acceptable definitions. The recommendation concerning "common-law" spouses has been expanded to state that definitions may restrict benefits to one beneficiary, and that they may grant precedence to a legal spouse.

c) Death Benefits Under Pension Plans (Recommendation No. 37)

As in the chapter on sex-based differentials, we have added an explicit recommendation that prohibits variations in death benefits on the basis of marital status.

d) Survivor Benefits (Recommendation Nos. 41 and 47)

Our original report did not make it clear that, in allowing survivor benefits under pension or life insurance plans to vary by marital status, we were only including life-time income benefits. We trust that the above recommendation concerning death benefits under pension plans will have assisted in overcoming the impression that lump-sum or installment benefits could vary by marital status. To prevent evasive commutation of survivor benefits, we have

modified the relevant recommendations to make it clear that only survivor benefits of less than $25 per month can be commuted to a lump-sum form.

We have also revised these recommendations to clarify our original intent that employers may consider the marital status of the survivor in the plan's remarriage provisions.

e) Dependents' Life Insurance (Recommendation Nos. 48 and 49)

We have introduced explicit recommendations concerning dependents' life insurance coverage. We do not consider that access to, or the level of, this kind of coverage should vary by marital status with respect to insurance on the lives of dependent children. We do, however, accept the current practice of restricting this kind of coverage to spouses, rather than any dependent adult/s.

5. CHAPTER SEVEN: RECOMMENDATIONS CONCERNING AGE

a) Definition of "Age" (Recommendation No. 62)

In our Interim Report we utilized the definition of "age" that is employed under the Human Rights Code, i.e. 40 to 65. On reconsideration, we have decided to expand the definition of "age" from 18 to 65 years of age.

b) Minimum Eligibility ages Under Pension PLans (Recommendation No. 63.)

Under the original definition of age, there was no need to make any recommendation concerning minimum eligibility ages under the age of 40. In view of our revised definition, however, we realize that it is necessary to allow the current practice of setting minimum eligibility ages above the age of 18 years.

c) Death Benefits and Survivor Benefits Under Pension Plans (Recommendation Nos. 67 and 68)

Although we permit primary employee benefits to vary by age according to The Pension Benefits Act of Ontario, we have added new recommendations to make it clear that we did not intend that either death benefits or survivor benefits should be allowed to vary by the age of the employee.

d) Benefit Schedules Under Life Insurance Plans (Recommendation No. 74)

In the Interim Report we made a distinction between compulsory and voluntary life insurance plans or features of plans, regardless of employer contributions. In recognition of the

"needs" argument concerning life insurance and age, we recommended that benefit levels should be allowed to vary by age under voluntary plans or features of plans. We were assuming a typical benefit design where basic life insurance coverage is provided on a compulsory basis, while additional coverage may be chosen as a voluntary "extra". We became aware, however, that employers could provide all life insurance on a technically "voluntary basis, thereby evading the intent of the original recommendations. We have therefore decided to restrict the exception to life insurance that is both voluntary and employee-pay-all.

e) Supplementary Disability Benefits Under Life Insurance Plans (Recommendation No. 75)

Several briefs drew our attention to the practice of restricting these kinds of benefits to employees under the age of 60 years. We have therefore added a recommendation to prohibit such practices.

6. CHAPTER EIGHT: RECOMMENDATIONS CONCERNING ADMINISTRATION

a) Effective Date (Recommendation No. 90)

We have had to revise our original recommendation concerning an effective date. At the same time, we are proposing a three-month period between the date of gazetting the regulations and the effective date. We trust that this lead-time will enable all parties to acquaint themselves with the changes that will be required, and make for a smooth transition.

b) Implementation Schedule (Recommendation No. 91)

To further assist in a smooth transition, we are recommending a schedule of implementation that respects the renewal dates of existing plans under contracts or collective agreements. Group policies and contracts will be given one year within which to make any changes, while collective agreements will be given two years within which to comply.

c) Protection of Existing Benefits (Recommendation No. 92)

We have withdrawn our original recommendation that all benefits, other than pensions, would have to equalize upwards where inequalities exist. We still propose that existing health, medical, and dental benefits be both protected and equalized up rather than down.

d) Status of Excluded Employees (Recommendation No. 96)

Several briefs asked about the status of existing employees who were denied access to benefit plans, or features of those plans. We are recommending that these employees be offered access on a voluntary basis in order to correct for the past discrimination against them.

CHAPTER TEN

LIST OF RECOMMENDATIONS

A. GENERAL RECOMMENDATIONS

1. With the exception of life insurance plans, benefit levels under voluntary employee-pay-all plans, or features of plans, be equal on the basis of sex and/or age, but that any variation in employee contribution rates by sex and/or age shall be on an actuarial basis only. (2 - revised) *

2. Benefit levels under voluntary employee-pay-all life insurance plans shall be allowed to vary on the basis of age, but not on the basis of sex. Employee contribution rates shall be allowed to vary by sex and/or age on an actuarial basis only, and by age in relation to the benefit schedules available. (2 - revised)

3. "Head-of-household" and related criteria shall not be permitted in determining eligibility, level of benefits, or any other aspect of benefit design. (3)

4. Employee benefit plans, or features of plans, shall be allowed to vary provided that the differential on which this variation is based does not evade the intent of Part X of The Employment Standards Act. (4)

B. RECOMMENDATIONS CONCERNING SEX

Pension Plans

5. Access to and participation requirements for pension plans shall not vary by sex. (5)

6. With the exception of the "money-purchase" features listed in recommendation number eight, employee benefit schedules under defined-benefit pension plans shall not vary by the sex of the employee. (6 - revised)

7. The level of employee benefits produced by money-purchase, profit-sharing, and composite pension plans shall be allowed to vary by sex on an actuarial basis only. (7)

8. Employee benefit schedules shall be allowed to vary by sex on an actuarial basis only, in respect of the following "money-purchase" features; provided that access to such benefits does not vary by sex

    a) under voluntary additional employee-pay-all pension plans or features;

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* The number in parenthesis following each recommendation refers to the original recommendation number in the Interim Report. Revisions and new recommendations are also noted in parenthesis.

b) at conversion of normal service pension benefits to elective options effective at retirement, provided that the same options are open to each sex;

c) at adjustment of normal service pension benefits at early or postponed retirement. (8)

9. The availability and level of death benefits under pension plans shall not vary by the sex of the employee. (new)

10. The availability of survivor and increased benefits payable under pension plans because of the existence of spouses and dependent children shall not vary by the sex of the employee or by "head-of-household" and related criteria. (9)

11. The level of survivor and increased benefits payable under pension plans because of the existence of spouses and dependent children shall not vary by the sex of the employee, or by "head-of-household" and related criteria, except for money-purchase, profit-sharing, and composite pension plans, where dependency and survivor benefit levels shall be allowed to vary by the sex of the employee on an actuarial basis only. (10)

12. Compulsory employee contribution rates to pension plans shall not vary by sex. (11)

13. Maximum and minimum rates of voluntary contributions that employees may make to voluntary pension plans or features shall not vary by sex. (12)

14. Employer contribution rates to pension plans shall be allowed to vary by sex on an actuarial basis only, and only in order to achieve equal benefits. (13)

15. Age and service-related rules, such as those for entry, and eligibility for early and normal pension benefits, disability and death benefits, and vesting shall not vary by sex. (14)

Life Insurance Plans

16. Access to and participation requirements for life insurance plans shall not vary by sex or by "head-of-household" and related criteria. (15)

17. Employee benefit schedules under life insurance plans shall not vary by sex or by "head-of-household" and related criteria. (16)

18. The availability and level of survivor benefits payable under life insurance plans because of the existence of surviving spouses or children shall not vary by the sex of the employee, or by "head-of-household" and related criteria. (17)

19. The availability and level of dependent life insurance coverage under life insurance plans shall not vary by the sex of the employee, or by "head-of-household" and related criteria. (new)

20. Employee contribution rates to group life insurance plans shall not vary by sex, except for voluntary employee-pay-all plans or features of plans, where employee contribution rates shall be allowed to vary by sex on an actuarial basis only. (18)

21. Employer contribution rates to life insurance plans shall be allowed to vary by sex on an actuarial basis only, and only in order to achieve equal benefits. (19)

Short and Long-Term Disability Insurance Plans

22. Access to and eligibility requirements for short and long-term disability insurance plans shall not vary by sex or by "head-of-household" and related criteria. (20)

23. Employee benefit schedules under short and long-term disability insurance plans shall not vary by sex or by "head-of-household" and related criteria. (21)

24. During active employment, disability due to pregnancy complications or to unrelated disability that occurs during pregnancy shall not be excluded from short and long-term disability plans. (22 - revised)

25. Where conception occurred during the period that the employee was actively employed, pregnancy-related disability that occurs during pregnancy leave of absence shall not be excluded from short and long-term disability plans. (new)

26. Employee contribution rates to short and long-term disability insurance plans shall not vary by sex, except for voluntary employee-pay-all plans, where employee contributions shall be allowed to vary by sex on an actuarial basis only. (23)

27. Employer contribution rates to short and long-term disability insurance plans shall be allowed to vary by sex on an actuarial basis only, and only in order to achieve equal benefits. (24)

Group Health, Medical (OHIP) and Dental Insurance Plans

28. Access to and eligibility requirements for health and medical insurance plans shall not vary by sex or by "head-of-household" and related criteria. (25)

29. The right to reimbursement of costs under extended health insurance plans shall not vary by sex, and such reimbursement of costs shall include costs arising out of pregnancy. (26)

30. Employee contribution rates to health and medical insurance plans shall not vary by sex; except for voluntary employee-pay-all plans, where employee contributions shall be allowed to vary by sex on an actuarial basis only. (27)

31. Employer contribution rates to health and medical insurance shall be allowed to vary by sex on an actuarial basis only, and only in order to achieve equal benefits. (28 - revised)

C. RECOMMENDATIONS CONCERNING MARITAL STATUS

General

32. In determining eligibility and level of employee and increased benefits related to children, all employees with dependent children shall be treated equally. (29 - revised)

33. In determining eligibility and level of increased or survivor benefits, all dependent children of employees shall be treated equally. (29 - revised)

34. In determining eligibility and level of benefits, "common-law" spouses shall be defined in the terms of the plan and shall have the same status as legally married spouses. These definitions may restrict benefits to one beneficiary, and they may grant precedence to legal spouses. (30 - revised)

Pension Plans

35. Access to and participation requirements for pension plans shall not vary by marital status. (31)

36. Primary employee benefit schedules under pension plans shall not vary by marital status. (32)

37. Death benefits under pension plans shall not vary by marital status. (new)

38. The availability and level of increased benefits payable to the employee under pension plans because of the existence of dependent children shall not vary by the marital status of the employee. (33)

39. The availability and level of increased benefits payable to the employee under pension plans because of the existence of dependent adults shall not vary by the marital status of the employee as such, but only for dependency as defined in the plan, for example, dependent spouses. (34)

40. The availability and level of survivor benefits payable under pension plans because of the existence of surviving children shall not vary by the marital status of the employee. (35)

41. The availability and level of survivor benefits payable under pension plans, including commuted benefits of less than $25 per month, to surviving adults shall be allowed to vary by the marital status of the employee, and by the marital status of the survivor for remarriage purposes. (36 - revised)

42. Employee contribution rates to pension plans shall not vary by marital status. (37)

43. We recommend that employer contribution rates to pension plans shall not vary by marital status, except under defined benefit pension plans that provide spouses' benefits, where employer contribution rates shall be allowed to vary by marital status. (38)

Life Insurance Plans

44. Access to and participation requirements for life insurance plans shall not vary by marital status. (39)

45. Lump-sum benefit schedules, including lump-sum benefits paid in two or more installments under life insurance plans shall not vary by marital status. (40 - revised)

46. The availability and level of income benefits payable under life insurance plans because of the existence of surviving children shall not vary by the marital status of the employee. (41)

47. The availability and level of income benefits payable under life insurance plans, including commuted benefits of less than $25 per month, to surviving adults shall be allowed to vary by the marital status of the employee and by the marital status of the survivor for remarriage purposes. (42 - revised)

48. The availability and level of dependent life insurance coverage under life insurance plans for dependent children shall not vary by the marital status of the employee. (new)

49. The availability and level of dependent life insurance coverage under life insurance plans for dependent adults shall be allowed to vary by the marital status of the employee. (new)

50. Employee contribution rates to life insurance plans shall not vary by marital status, except for surviving spouses' income benefits where employee contribution rates shall be allowed to vary by marital status. (43)

51. Employer contribution rates to life insurance plans shall not vary by marital status, except for surviving spouses' income benefits where they shall be allowed to vary by marital status. (44)

Short and Long-Term Disability Insurance Plans

52. Access to and participation requirements for disability insurance plans shall not vary by marital status. (45)

53. Benefit schedules under disability insurance plans shall not vary by marital status. (46)

54. Employee contribution rates for disability insurance plans shall not vary by marital status. (47)

55. Employer contribution rates for disability insurance plans shall not vary by marital status. (48)

Group Health, Medical (OHIP), and Dental Insurance Plans

56. Access to and participation requirements for health and medical insurance plans shall not vary by marital status. (49)

57. The type and level of coverage available for dependent children under health and medical insurance plans shall not vary by marital status. (50)

58. The type and level of coverage available for dependent adults under health and medical insurance plans shall be allowed to vary by marital status. (51)

59. Employee contribution rates for dependent children's coverage under health and medical insurance plans shall not vary by marital status. (52)

60. Employee contribution rates for spouses' coverage under health and medical insurance plans shall be allowed to vary by marital status. (53)

61. Employer contribution rates for health and medical insurance plans shall not vary by marital status. Where there are specified premium rates, however, equal contribution assistance shall mean either the same flat dollar amount, or the same proportion of different contribution rates. (54)

D. RECOMMENDATIONS CONCERNING AGE

General

62. Under Part X of The Employment Standards Act, "age" be defined as between 18 and 65 years. (new)

Pension Plans

63. Minimum eligibility ages for access to pension plans shall be allowed to vary by age. (new)

64. Subject to uniform service requirements and a normal pensionable date of 65 years, maximum eligibility ages below the age of 65 years for access to pension plans shall not be allowed. (55)

65. Where normal pension is available before age 65, then maximum eligibility ages below the age of 65 years for access to pension plans shall not be allowed, except where existing employees above the normal pensionable date cannot continue to accrue benefits for current years of service. (56)

66. Primary employee benefit schedules under pension plans shall be allowed to vary by age according to The Pension Benefits Act of Ontario. (57 - revised)

67. The formulae for death benefits under pension plans shall not vary by the age of the employee. (57 - revised)

68. The formulae for survivor benefits under pension plans shall not vary by the age of the employee. (57 - revised)

69. Employee contribution rates to pension plans shall not vary by age except for:

    a) Voluntary additional contributions, and

    b) Compulsory contributions under money-purchase and profit-sharing pension plans

    which shall be allowed to vary by age. (58)

70. Employer contributions to pension plans shall be allowed to vary by age, according to The Pension Benefits Act of Ontario, and on an actuarial basis. (59)

71. Vesting of pension benefits and/or vesting of pension contributions shall be allowed to vary by age according to The Pension Benefits Act of Ontario. (60)

72. Provided that the rules of the pension plan are consistently applied to all employees under the plan, and provided that they are not conditional upon compulsory retirement below 65 years, the ages for service, disability and survivor pensions or death benefits shall be allowed to vary below the age of 65 years. (61)

Life Insurance Plans

73. Subject to uniform service requirements, access to life insurance plans shall not vary by age. (62)

74. Benefit schedules under life insurance plans or features of plans shall not vary by the age of the employee, except for voluntary employee-pay-all life insurance plans or features of plans, where benefit schedules shall be allowed to vary by the age of the employee. (63 & 64 - revised)

75. Access to and the level of supplementary disability benefits under life insurance plans shall not vary by the age of the employee. (new)

76. Employee contribution rates to life insurance plans shall not vary by the age of the employee, except under voluntary employee-pay-all plans, or features of plans, where employee contribution rates shall be allowed to vary by the age of the employee, both in relation to the benefit schedule available, and on an actuarial basis. (65)

77. Employer contribution rates to life insurance plans shall be allowed to vary by age on an actuarial basis only, and only in order to achieve equal benefits. (66 & 67 - revised)

Short-Term Disability Insurance Plans

78. Subject to uniform service requirements, access to short-term disability insurance plans shall not vary by age. (68)

79. Benefit schedules under short-term disability insurance plans shall not vary by age. (69)

80. Employee contribution rates to short-term disability insurance plans shall not vary by age, except for voluntary employee-pay-all plans, where they shall be allowed to vary by age on an actuarial basis only. (70)

81. Employer contribution rates to short-term disability insurance plans shall be allowed to vary by age on an actuarial basis only, and only in order to achieve equal benefits. (71)

Long-Term Disability Insurance Plans

82. Subject to uniform service requirements and a norm al pensionable date of 65 years, access to long-term disability insurance plans shall not vary by age, including the specification of maximum eligibility ages below 65 years. (72)

83. Where normal pension is available before age 65, access to long-term disability insurance plans shall not vary by age, except where existing employees above the normal pensionable age do not have continuing coverage, when maximum eligibility ages below the age of 65 years shall be allowed. (73)

84. Long-term disability insurance coverage shall not be terminated before age 65, or before normal pensionable date, whichever is earlier. (74)

85. Benefit schedules under long-term disability insurance plans shall not vary by age. (75)

86. Employee contribution rates to long-term disability insurance plans shall not vary by age, except under voluntary employee-pay-all plans where they shall be allowed to vary by age on an actuarial basis only. (76)

87. Employer contribution rates to long-term disability insurance plans shall be allowed to vary on an actuarial basis only, and only in order to achieve equal benefits. (77)

Group Health, Medical (OHIP), and Dental Insurance Plans

88. Access, benefit schedules, and employee contribution rates under health and medical insurance plans shall not vary by age. (78)

E. RECOMMENDATIONS CONCERNING ADMINISTRATION

Complementary Enforcement by Other Government Agencies

89. The Minister of Labour approach relevant agencies within the Provincial Government to explore the advisability of complementary enforcement of Part X. (84)

Effective Date

90. Part X of The Employment Standards Act be proclaimed in effect three months after the Regulations under Section 34(5) have been gazetted, or October 1st, 1975, whichever is earlier. (new)

Implementation Schedule

91. Regulations be developed under Section 34(5)(c) of The Employment Standards Act to provide for suspended application of Part X as follows:-

a) Existing plans under contracts to comply one year from the date of proclamation, or the next renewal date, whichever is earlier.

b) Existing plans under collective agreements to comply two years from the date of proclamation or the next expiry date, whichever is earlier. (new)

Benefits Other than Pensions

92. No employer shall reduce the health, medical (OHIP), or dental benefits of an employee in order to comply with Part X of The Employment Standards Act. (82 - revised)

Pension Benefits

i) Pensionable Dates

93. Where pensionable dates are changed in order to comply with Part X, they shall be allowed to vary according to the new terms of the pension plan. (79)

ii) Accrued Benefits

94. The value of the pension benefits that are accrued at the effective date of Part X, and the rules concerning the payment thereof, shall be preserved and applied under terms not less favourable than those in force immediately before the effective date of Part X. (80)

iii) Future Benefits

95. Pension benefits that accrue after the effective date of Part X shall be allowed to change according to the new terms of the pension plan. (81)

Status of Excluded Employees

96. Where employees were denied access to plans, or features of plans, because of their sex, marital status, or age, employers shall provide access on a voluntary basis. (new)

A P P E N D I C E S

APPENDIX I

LIST OF BRIEFS

A. Original Briefs

1. Mrs. Lois G. Allan - Sault Ste. Marie
2. Amalgamated Transit Union - Division 113 - Toronto
3. Mr. D.C. Baldwin - Toronto
4. Business and Professional Women's Clubs of Ontario
5. Canadian Association of Accident and Sickness Insurers
6. Canadian Consumer Loan Association
7. Canadian Institute of Management - Toronto Branch
8. Canadian Life Insurance Association
9. Canadian Manufacturers' Association - Ontario Division
10. Canadian Pension Conference

11. Canadian Union of Public Employees, Ontario Division
12. Canadian Gypsum Company, Limited
13. Mr. M. Chakravarty - Sudbury
14. Crown Life Insurance Company
15. Children's Aid Society of Metropolitan Toronto - Staff Association
16. Mr. Robert Dale - Ottawa
17. Mr. V.S. Derco - Don Mills
18. Dominion Foundries and Steel, Limited
19. Domtar Limited
20. Individual Brief

21. Economic Security Employees' National Association, District 5
22. Individual brief
23. Federation of Women Teachers' Associations of Ontario
24. Fisons (Canada) Limited
25. Foster Wheeler Limited
26. Mr. E.W. Gibson - Toronto
27. Grocery Products Manufacturers of Canada
28. Individual brief
29. Imperial Oil Limited
30. Mr. L. Karasiewicz - Thunder Bay

31. Charles A. Kench and Associates Limited
32. The Life Underwriters Association of Canada
33. Elsie Gregory MacGill - Toronto
34. Mrs. Carolynn MacKenzie - Thornhill
35. Mr. W.B. McCarter - Downsview
36. Mrs. Rory McEvoy - Don Mills
37. William M. Mercer Limited
38. Individual brief
39. The Niagara Wire Weaving Company Limited
40. Mrs. William O'Neil - London

41. Ontario Committee on the Status of Women
42. Ontario Federation of Labour
43. The Ontario Flue-Cured Tobacco Growers' Marketing Board
44. Ontario Teachers' Federation
45. Ms. Audrey Orr - Toronto
46. Mrs. Joan Spira - Willowdale
47. Mr. G.W. Sprowl - Mississauga
48. Standard Paving and Materials, Limited
49. Teachers Insurance and Annuity Association of America: College Retirement Equities Fund
50. Thunder Bay School of Medical Technology

51. Tobacco Workers International Union, Local 323, Guelph
52. Tomenson - Alexander Limited
53. Toronto Board of Education, Non-Teaching Employees
54. The University of Western Ontario, London
55. Individual Brief
56. Mr. Craig B. Wilson, Ottawa

B. Briefs in Response to the Interim Report

1. Amalgamated Transit Union - Division 113 - Toronto
2. Mr. Charles C. Black, F.S.A., F.C.I.A.
3. Professor Gail Brent - London
4. Business and Professional Women's Clubs of Ontario
5. Canada Consulting Group
6. Canada Life Assurance Company
7. Canadian Association of Accident and Sickness Insurers
8. Canadian Manufacturers' Association - Ontario Division
9. Canadian Life Insurance Association
10. Canadian Pension Conference

11. Christie, Brown and Company, Limited (2)
12. Confederation Life Insurance Company (2)
13. Ms. K. Jean Cottam - Ottawa
14. Dickenson Mines Limited
15. Excelsior Life Insurance Company
16. Federation of Women Teachers' Associations of Ontario
17. Ms. Alida J. Groenendijk - Toronto
18. Mr. J. R. Gray, F.S.A., F.C.I.A.
19. Johnson and Higgins Willis Faber, Ltd.
20. Mr. Wyndham G. Johnson - Toronto

21. Kellogg Salada Canada Ltd.
22. Charles A. Kench and Associates Limited
23. Life Underwriters Association of Canada
24. City of London, Board of Education for the
25. Ontario Federation of Labour
26. Ontario Status of Women Council
27. Peat, Marwick and Partners
28. William M. Mercer Limited (3)
29. Mr. F. E. Smith, F.S.A., F.C.I.A.
30. Standard Industries Ltd.

31. Mr. Howard A. Tate - Toronto
32. Tomenson-Alexander Limited
33. Mr. F. J. Turner - Sudbury

Total of 37 submissions

APPENDIX II

Excerpt from U.S. Guidelines On Discrimination Because of Sex

(Equal Employment Opportunity Commission. Title 29 C F R, Chapter XIV, Part 1604, Sections 1604.1 to 1604.10, effective April 5,1972)

[¶ 3950.09]

Sec. 1604.9 Fringe Benefits.—(a) "Fringe benefits," as used herein, includes medical, hospital, accident, life insurance and retirement benefits; profit-sharing and bonus plans; leave; and other terms, conditions, and privileges of employment.

(b) It shall be an unlawful employment practice for an employer to discriminate between men and women with regard to fringe benefits.

(c) Where an employer conditions benefits available to employees and their spouses and families on whether the employee is the "head of the household" or "principal wage earner" in the family unit, the benefits tend to be available only to male employees and their families. Due to the fact that such conditioning discriminatorily affects the rights of women employees, and that "head of household" or "principal wage earner" status bears no relationship to job performance, benefits which are so conditioned will be found a prima facie violation of the prohibitions against sex discrimination contained in the Act.

(d) It shall be an unlawful employment practice for an employer to make available benefits for the wives and families of male employees where the same benefits are not made available for the husbands and families of female employees; or to make available benefits for the wives of male employees which are not made available for female employees; or to make available benefits to the husbands of female employees which are not made available for male employees. An example of such an unlawful employment practice is a situation in which wives of male employees receive maternity benefits while female employees receive no such benefits.

(e) It shall not be a defense under Title VII to a charge of sex discrimination in benefits that the cost of such benefits is greater with respect to one sex than the other.

(f) It shall be an unlawful employment practice for an employer to have a pension or retirement plan which establishes different optional or compulsory retirement ages based on sex, or which differentiates in benefits on the basis of sex. A statement of the General Counsel of September 13, 1968, providing for a phasing out of differentials with regard to optional retirement age for certain incumbent employees is hereby withdrawn.

[¶ 3950.10]

Sec. 1604.10 Employment Policies Relating to Pregnancy and Childbirth.—(a) A written or unwritten employment policy or practice which excludes from employment applicants or employees because of pregnancy is in prima facie violation of Title VII.

(b) Disabilities caused or contributed to by pregnancy, miscarriage, abortion, childbirth, and recovery therefrom are, for all job-related purposes, temporary disabilities and should be treated as such under any health or temporary disability insurance or sick leave plan available in connection with employment. Written and unwritten employment policies and practices involving matters such as the commencement and duration of leave, the availability of extensions, the accrual of seniority and other benefits and privileges, reinstatement, and payment under any health or temporary disability insurance or sick leave plan, formal or informal, shall be applied to disability due to pregnancy or childbirth on the same terms and conditions as they are applied to other temporary disabilities.

(c) Where the termination of an employee who is temporarily disabled is caused by an employment policy under which insufficient or no leave is available, such a termination violates the Act if it has a disparate impact on employees of one sex and is not justified by business necessity.

Manitoba Human Rights Commission
Informational Bulletin

TELEPHONE : 942-8521 430 EDMONTON ST., WINNIPEG, MANITOBA, R3B 2M3

No. 3

Group Insurance and Superannuation Plans and the Manitoba Human Rights Act

THE HUMAN RIGHTS ACT provides:

. . . . that an employer shall not discriminate against anyone regarding employment or any condition of employment because of race, creed, religion, sex, colour, nationality, ancestry or place of origin.

. . . . that a trade union, employer's organization or other occupational association, shall not discriminate against anyone because of race, religious beliefs, marital status, color, sex, ancestry or place or origin.

The Manitoba Human Rights Commission has examined the terms and conditions of various group, superannuation, and insurance plans as to how they affect employees who are required by the terms of their employment to participate in a plan. It has been found that in various industries, public and private, "conditions of employment" are often imposed which draw distinctions between certain classes of individuals. The following list, although not exhaustive, illustrates some common distinctions:

1. **Differing eligibility based upon sex:**
   a) Females without dependents may only purchase a stated limited amount of life insurance whereas single males may purchase varying higher amounts according to the amount of their annual earnings.
   b) Females may enter a pension plan at age 25, males at age 21.
   c) Married males are eligible for higher amounts of life insurance than married females.
   d) Married males automatically qualify for spousal income benefits upon death. Married females qualify for such benefits only upon proof of total disability and dependency of spouse.
   e) A female applicant may be required to take a medical examination prior to qualifying for coverage, whereas her male counterpart may not be required to do so.

This means that despite need or individual requirements, that whether or not a woman is the sole breadwinner in the family, her husband is denied benefits upon her death which would accrue to a widow under the same circumstances.

2. **Differing benefits in automatic group coverage upon employment based upon sex:**

   Males are insured for $ X life insurance. Females are insured for $ X life insurance, an amount considerably less than the coverage provided her male counterpart.

In the above examples the distinguishing features of the plans are based solely upon sex or marital status regardless of the circumstances or of the individual employee's needs. This kind of grouping, in the opinion of the Human Rights Commission, contravenes the Human Rights Act which prohibits such discrimination and it has been seeking changes in existing plans which will conform with this legislation. Any persons, corporations or unions entering into new contracts should be cognizant of these areas of distinction and it is their responsibility to be aware of human rights legislation and to prevent future contraventions of the Human Rights Act.

3. **Differing eligibility based upon status:**

   a) The amount of life insurance which can be purchased by an employee is often limited by the amount of his or her annual earnings from one source.

   b) Eligibility to enter the plan may depend upon whether one is a "professional" employee or a "clerical" employee. Different benefits therefore become available through the same employer based upon class distinctions. Often this means that those persons who really most need the availability of inexpensive life insurance coverage are prevented from obtaining it because of distinctions based upon status. Employees earning less than $7,500 per annum, in the opinion of the Commission, most need reasonable group insurance both in terms of rates and values and it is felt that artificial barriers have been set up and perpetuated based upon class and status. It is felt that this violates the spirit and intent of the Human Rights Act. In furthering the principles of equality of opportunity and equality in the exercise of civil and legal rights regardless of status, the Commission would like to see changes made in this direction so that all employees regardless of status or group, derive all the benefits and opportunities to which they are entitled.

4. Sick benefits often differ according to sex — the premiums payable by all the employees are usually the same, however, female employees when ill, receive an amount of sick pay considerably less than their male counterpart.

5. Differing compulsory retirement ages based upon sex. Male employees, for example, often must retire at age 65, female employees at age 60. This kind of differentiation again delineates an approach to benefits which is based upon completely inequitable groupings based upon classes of people rather than upon individual capabilities or opportunities.

The above examples represent long standing and historical practices which deprive an individual of equal opportunity and treatment and should be excluded from existing and future employment agreements and practices.

The Commission urges you to assist it in encouraging and fostering better relationships between employees and employers and unions by establishing employment practices which further the principles of equality of opportunity and treatment with respect to employment and occupation.

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NEW BRUNSWICK
HUMAN RIGHTS
COMMISSION

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APPENDIX III B - NEW BRUNSWICK

GUIDELINES FOR ENSURING COMPLIANCE WITH THE NEW BRUNSWICK HUMAN RIGHTS CODE IN THE MATTER OF DISCRIMINATION ON THE GROUNDS OF SEX OR MARITAL STATUS IN EMPLOYEE BENEFIT PROGRAMS

THE HUMAN RIGHTS CODE

The Legislative Assembly of New Brunswick initially adopted a Human Rights Act in 1967. This Act was revised in 1971 with authority given to cite the Act as the Human Rights Code. In 1973 further amendments added "age" and "marital status" to the list of variables upon which discrimination shall be judged. These latter amendments were proclaimed in effect as of December 10, 1973.

APPLICATION FOR EMPLOYEE BENEFIT PROGRAMS

Employee benefit programs include inter alia:pension plans, group life insurance plans, long term disability and other income protection plans, accidental death and dismemberment plans, and health insurance plans.

Subsection 3(1) (b) of the Human Rights Code refers to discrimination against any person in regard to "any term or condition of employment". Since benefit programs may be made available to employees by an employer on either a voluntary or compulsory basis, and under various contribution arrangements, some clarification is required with respect to the range of benefit programs which fall within the scope of the phrase "term or condition of employment".

The Human Rights Code applies to both voluntary and compulsory plans in respect of which the employer pays any part of the cost, on the basis that all such plans can be defined as either "terms of employment" or "conditions of employment". On this basis, the only categories of benefit programs which do not fall within the scope of subsection 3 (1) (b) of the Human Rights Code are the following:

1. Voluntary benefit programs offered to the employees of a given employer or employers, in which the employee contributes the full cost of the benefits.

2. Voluntary plans which are not connected specifically with employment for any given

employer, such as plans which are established to cover members of professional or other associations and in which the plan members pay the entire cost of the benefits.

PURPOSE OF GUIDELINES

Due to the complex nature of employee benefit programs and the myriad clauses of the various plans it is not feasible to establish exact requirements for each case of alleged discrimination which may arise. The Human Rights Commission has decided that each complaint of alleged violation under an employee benefit plan will be thoroughly investigated and settlement reached either through negotiation or due process of law. However, in order to make employers aware of the Commission's interpretation of the application of the Human Rights Code to certain clauses in employee benefit programs the following guidelines have been established.

The guidelines are neither comprehensive or categorical, but rather designed to illustrate the principles which the Commission intends to follow in assessing possible discrimination with respect to certain important provisions

of employee benefit programs. The process of establishing guidelines will be a continuing one, at least for some time to come.

GUIDELINES

All Plans (Eligibility and Participation)

Any employee benefit program in which eligibility rules vary according to sex or marital status is considered discriminatory under the provisions of clause (b), subsection (1), section 3 of the Human Rights Code.

In addition, an employee benefit program under which the eligibility rules are based on the concept of "head of the household" or "principal wage earner" may be considered sex-discriminatory, depending on the circumstances, since such a program tends to be available only to male employees.

Any employee benefit program in which participation requirements vary according to sex or marital status is considered discriminatory under the provisions of subsection 3 (1) (b) of the Human Rights Code.

Pension Plans (Normal Retirement Age)

Any pension plan in which normal retirement age

varies according to sex is considered discriminatory under the provisions of clause (b), subsection (1), section 3 of the Human Rights Code.

Pension Plans (Early or Late Retirement)

Any pension plan in which early retirement provisions or late retirement provisions vary according to sex is considered discriminatory under the provisions of clause (b), subsection (1), section 3 of the Human Rights Code.

Pension Plans (Benefits) Money Purchase Plans Excluded

Any pension plan (other than a money purchase pension plan) under which benefits vary according to either sex or marital status is considered discriminatory under the provisions of the Human Rights Code.

However, the inclusion of a dependency status with respect to payment of survivors benefits on the death of a member of a pension plan is permissible provided that the definition of dependency does not vary according to sex. In addition, provision for the cessation of a survivor's benefit in the event of remarriage will not be considered to constitute discrimination on the grounds of marital status.

Pension Plans (Benefits) Money Purchase Plans

Differences according to sex in the annual or periodic pensions payable under a money purchase plan which are attributable solely to mortality differentials by sex will not result in the plan being considered discriminatory under the provisions of clause (b), subsection (1), section 3 of the Human Rights Code provided that other provisions of the plan are not discriminatory under the guidelines contained in this paper, and further provided that there is no variation according to sex in either the employer or employee contributions, or in the basis of accumulation of these contributions to the credit of employees.

Pension Plans (Contribution Rates)

Any pension plan (other than a money purchase plan) under which required employee contribution rates vary according to sex or marital status is considered discriminatory under the provisions of the Human Rights Code.

Any money purchase pension plan under which either required employee or employer contribution rates vary according to sex is considered discriminatory under the provisions of the Human Rights Code.

Pension Plans (Optional Benefits)

Difference by sex in the levels of optional forms of

benefit payable in lieu of the normal form of benefit under a pension plan are not considered discriminatory on the grounds of sex under clause (b), subsection (1), section 3 of the Human Rights Code, provided that such differences in benefits are attributable solely to differences in mortality according to sex. However, any differences by sex in optional forms of benefits due to factors other than differences in mortality according to sex are considered discriminatory.

Optional forms of benefit include any form of benefit which employees may elect at their sole discretion, in lieu of the normal form of benefit which would otherwise be payable to them under the terms of the plan.

This guideline should not be interpreted to mean that differences by sex in optional benefits must apply where mortality differences by sex exist.

Pension Plans (Retroactivity and Protection of Existing Rights)

The effective date for compliance of pension plans with the provisions of the Human Rights Code of New Brunswick is December 10, 1973. Where possible, all necessary plan amendments should be retroactive to December 10, 1973 for plans which existed on that date, and retroactive to the effective date of the plan for plans which commenced after that date.

Any amendment of a pension plan to comply with the

provisions of the Human Rights Code, whether or not the amendment applies retroactively, should not divest plan members of any existing rights or benefits accrued in respect of service rendered prior to the date of the amendment. Adjustment of rights or benefits in respect of service of members after December 10, 1973 in order to comply with the provisions of the Human Rights Code may be made on such a basis as is consistent with the terms and conditions of the plan and any relevant related provisions such as those contained in a collective agreement or other similar agreement under which the plan may be constituted.

Group Life Insurance Plans (Benefits)

Any group life insurance plan in which benefits differ according to sex is considered discriminatory under the provisions of clause (b), subsection (1), section 3 of the Human Rights Code.

Differences in benefit levels under group life insurance plans according to either marital status or dependency status are not considered discriminatory under the provisions of clause (b), subsection (1), section 3 of the Human Rights Code, provided that in the case of dependency status the definition of dependency does not vary according to sex.

However, differences in benefit levels according to

both marital status and dependency status are considered discriminatory since in such a situation, additional benefits may be payable in recognition of the existence of a certain category of dependents of married, widowed or divorced employees without similar additional benefits being granted in recognition of the same category of dependents of a single employee. An example of such a situation can be seen in the following schedule of benefits for group life insurance:

Category of Employee	Benefit Level
Single employees	1 x salary
Married, widowed or divorced employees with one dependent	2 x salary
Married, widowed or divorced employees with two or more dependents	3 x salary

Dependent means a spouse, and any other person whom the employee is entitled to claim as a dependent for income tax purposes under the provisions of the Income Tax Act.

Under the above schedule a widowed or divorced person with a dependent child would be entitled to a benefit of 2 x salary whereas a single employee with a dependent child would

be entitled to only 1 x salary. Similarly, a married person with no children but with an aged dependent parent would be entitled to an extra 1 x salary in recognition of the existence of the aged dependent parent, whereas a single employee in similar circumstances would receive no additional benefit, and so on.

This problem could be corrected by implementing the following revised schedule of benefits and retaining the same definition of dependents:

Category of Employee	Benefit Level
Employees with no dependents	1 x salary
Employees with one dependent	2 x salary
Employees with two or more dependents	3 x salary

Group Life Insurance Plans (Contribution Rates)

Any group life insurance plan under which employee contribution rates vary according to sex or marital status is considered discriminatory under the provisions of clause (b), subsection (1), section 3 of the Human Rights Code.

Group Life Insurance Plans (Retroactivity and Protection of Existing Rights)

The effective date for compliance of group life insurance plans with provisions of the Human Rights Code of New Brunswick is December 10, 1973. Retroactive application of any necessary plan amendments is not required.

Any amendments to a group life plan to comply with the provisions of the Human Rights Code should not result in any diminuition of the existing benefit levels or other rights of employees covered by the plan.

Dependent Coverage

The principles outlined in the foregoing guidelines relating to discrimination with respect to benefit plan coverage for employees apply equally to benefit plan coverage made available by an employer for dependents of employees. Dependent coverage normally arises in the context of group insurance plans, particularly health care insurance plans and group life insurance plans.

Matters Not Specifically Covered

Questions will undoubtedly arise with respect to many items not specifically covered by the foregoing guidelines.

Guidance on such questions will be given by the Commission on the basis of principles similar to those underlying the foregoing guidelines, and additional guidelines will be issued where appropriate.

APPENDIX III C - SASKATCHEWAN

Excerpt from "Farther Employment Practices and You, Equal Opportunity in Employment, A Guide for Employer."

SASKATCHEWAN HUMAN RIGHTS COMMISSION

Informational Bulletin

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UNDERLYING PRINCIPLE

The principle underlying the Saskatchewan Human Rights legislation as it relates to employment is to ensure that employees or prospective employees are looked at as individuals and assessed on their abilities and qualifications and not on generalizations made on their membership in a minority group or on their sex.

WHAT DOES THIS MEAN?

Long-standing and historical practices such as classifying employees or work and benefits according to sex, or other distinctions which may deprive an individual of equal opportunity or treatment are unlawful and should be excluded from existing and future employment agreements and practices.

The Commission asks employers to assess their own practices by reviewing the following checklist.

WHAT ABOUT YOUR COLLECTIVE AGREEMENTS?

1. Do you have "male" and "female" job classifications?
2. Do you have different starting salaries for males and females?
3. Are wages based on the sex of the people doing the job?
4. Do you have separate seniority lists based on sex?
5. Do fringe benefits differ according to the race, religion, colour, sex or ethnicity of the employee? How about retirement age, group life insurance plan, pension plan, accident and sickness benefits, overtime provisions?

If the answer to some or all of these questions is Yes—the Agreement may well be in violation of the Human Rights legislation.

APPENDIX IV

Definitions of "Common-Law" Spouse
(Effective January 1st, 1974)

A. Public Service Superannuation Act of Ontario

This Act provides equal survivor benefits for widows and widowers who were legally married to contributors. For the purpose of survivor benefits for "common-law" spouses, however, the Act defines "common-law" widows, but not widowers, as follows:

"SECTION 1. - (1) In this Act,

(h) "widows" includes a woman who,

(i) establishes to the satisfaction of the Board that she had, for a period of not less than seven years immediately prior to the death of a contributor with whom she had been residing and with whom by law she was prohibited from marrying by reason of a previous marriage either of the contributor or of herself to another person, been maintained and publicly represented by the contributor as his wife, or

(ii) establishes to the satisfaction of the Board that she had, for a number of years immediately prior to the death of a contributor with whom she had been residing, been maintained and publicly represented by the contributor as his wife, and that at the time of the death of the contributor, neither she nor the contributor was married to any other person.

(2) For the purpose of this Act, a woman who has established to the satisfaction of the Board that she is a widow under subclause i or ii of clause h of subsection 1 shall, if the Board so directs, be deemed to have become married to the contributor at such time as she commenced being represented by him as his wife, and a woman who could establish that she is a widow under subclause i or ii of clause h of subsection 1 but for her marriage to a contributor after such time as she commenced being represented by him as his wife shall, if the Board so directs, be deemed to have become married to the contributor at the time when, in fact, she commenced being so represented."

B. Federal Public Service Superannuation Act

The Superannuation Plan for federal public servants provides widow's but not widower's benefits. The definition of "common-law" widow is essentially the same as that under the Public Service Superannuation Act of Ontario, i.e.,

- seven years' residence immediately prior to the death of the contributor
- inability of one party to marry because of previous marriage
- maintained and publicly represented as the contributor's spouse.

C. Canada Pension Plan

The Canada Pension Plan provides widows' benefits, but only dependent widower's benefits. The definition of "common-law" spouse is essentially the same as that under the Public Service Superannuation Act of Ontario, except that Canada Pension Plan recognizes both "common-law" widows and widowers.

D. Federal Pension Act (members of the Canadian Forces)

Under this Act, "common-law" widows, but not widowers, are defined as follows:

"SECTION 32 - (6) For the purposes of this Act, a woman who

(a) was residing with a veteran immediately prior to his death and was prohibited from celebrating a marriage with him by reason of a previous marriage either of such veteran or of herself with another person, and

(b) shows to the satisfaction of the Commission that she was, for seven years or more, continuously maintained and publicly represented by such veteran as his wife.

shall, where the Commission in its discretion so directs, be deemed to be the widow of that deceased veteran."

E. Workmen's Compensation Act of Ontario

For the purpose of surviving spouses benefits, the Act defines "common-law" spouses as follows:

"SECTION 36 - (2) Where an employee has had for the entire period of six years immediately preceding his or her death a common-law wife or husband or where an employee has had during the entire period of two years immediately preceding his or her death a common-law wife or husband by whom he or she had had one or more children and leaves no dependent widow or widower, the compensation to which a dependent widow or widower would have been entitled under this part may in the discretion of the Board be paid to the dependent common-law wife or husband until such time as he or she marries."

F. The Succession Duty Act of Ontario

"SECTION (1) (e) - "common-law wife" means a woman who establishes to the satisfaction of the Minister that she had, for a number of years immediately prior to the death of the deceased with whom she had been residing, been publicly represented by the deceased as his wife, and "common-law husband" has a corresponding meaning."

G. Ontario Hospital Insurance Plan

Under OHIP a "common-law" spouse has access to family coverage for his or her spouse (and children) on the same basis as a legally married spouse. Eligibility for "common-law" status is interpreted according to the criterion that the parties live together, and are publicly represented as man and wife. Unlike the typical definitions used in relation to surviving spouses' benefits, the OHIP interpretation does not make any reference to the duration of common residence.

APPENDIX V

THE EMPLOYMENT STANDARDS ACT OF ONTARIO, 1974

PART X

EQUAL BENEFITS

Interpretation

34.—(1) In this Part, "benefits" include any retirement, pension, life insurance, income, disability, sickness, medical or hospital payments of a monetary kind to which an employee, his survivors or dependants are or may be entitled, directly or indirectly, under a plan, fund or arrangement provided, furnished or offered by an employer,

(*a*) in accordance with a term or condition of employment; or

(*b*) as a privilege of employment and in which benefits an employee may elect to participate whether the employer is or is not required to contribute to or under the plan, fund or arrangement.

No differentiation because of age, etc.

(2) Except as provided in the regulations, no employer or person acting on behalf of an employer shall differentiate or make any distinction, exclusion or preference between his employees or any class or classes of his employees because of their age, sex or marital status in respect of any benefits or contributions.

Employer not to be requested to contravene subs. 2

(3) No organization of employers or employees or their agents shall cause or attempt to cause an employer, directly or indirectly, to act contrary to subsection 2.

Powers of Director

(4) Where, in the opinion of the Director, an employer, a person acting on behalf of an employer or an organization of employers or employees or their agents may have acted contrary to this section, the Director may exercise the power conferred by subsection 1 of section 51, and section 51 applies *mutatis mutandis*.

or employees, shall cause or attempt to cause an employer, directly or indirectly, to act contrary to subsection 2.

Powers of Director

(4) Where, in the opinion of the Director, an employer, an organization of employers or employees or a person acting directly on behalf of an employer or such organization may have acted contrary to subsection 2, the Director may exercise the power conferred by subsection 1 of section 51, and section 51 applies *mutatis mutandis*.

Regulations

(5) In addition to the powers conferred by section 65, the Lieutenant Governor in Council may make regulations respecting any matter or thing necessary or advisable to carry out the intent and purpose of this Part, and without restricting the generality of the foregoing, may make regulations,

(*a*) exempting any fund, plan or arrangement or part thereof, heretofore or hereafter in existence, or any benefits thereunder from the application of this Part or any provision thereof;

(*b*) permitting a fund, plan or arrangement to provide, furnish or offer a benefit or benefits that differentiate or make a distinction, exclusion or preference between employees or a class thereof or their beneficiaries, survivors or dependants;

(*c*) suspending the application of this Part or any provision thereof to any fund, plan or arrangement or any benefits thereunder, whether provided, furnished or offered under a collective agreement or not, for such period or periods of time as may be prescribed;

(*d*) providing that an employer may not reduce any benefits to an employee or class of employees under any fund, plan or arrangement provided, furnished or offered in order that the employer may comply with subsection 2;

(*e*) providing the terms or conditions under which an employee may be entitled or disentitled to a benefit under a fund, plan or arrangement;

(*f*) defining any expression used in this Part, or in the regulations under this Part. *New*.

G L O S S A R Y

ACCESS	Right or means of becoming a member of an employee benefit plan. SEE also ELIGIBILITY REQUIREMENTS and PARTICIPATION REQUIREMENTS.
ACCIDENTAL DEATH AND DISMEMBERMENT BENEFITS (A.D. & D.)	Benefits which become payable in event of the death or dismemberment of the employee, as a consequence of accidental bodily injury. On death, a principal sum, usually equal to the amount of life insurance coverage, is payable, while on dismemberment, the principal sum or a proportion such as one-half is payable, depending on the nature of the dismemberment. There are some exceptions to coverage, including war, suicide and certain types of air travel. Standard coverage is on a full or "24-hour" basis, although an extra premium might be charged in the case of a hazardous occupation. The benefits may be provided under life insurance or health insurance contracts.
ACCRUAL	Growth in pension benefit, related to a period of service.
ACCRUAL RATES	Rules for determining accrual. For example, two per cent of annual salary, or $10 per year of service.
ACCRUED BENEFITS	Pension benefits accumulated to a specific date.
ACCUMULATED CONTRIBUTIONS	Contributions accrued under money-purchase and profit-sharing pension plans. SEE also MONEY-PURCHASE and PROFIT-SHARING PENSION PLANS.
ACTUARIAL ADJUSTMENTS	SEE REDUCTION FACTORS
ACTUARIAL BASIS	The underlying assumptions and methods used in establishing the cost of pension plans, insurance plans, or any other benefit plans under which payments depend on the contingencies of human life, such as sickness or death. These assumptions may include rates of interest, mortality, disability, resignation, retirement, and salary progression.
ADDITIONAL VOLUNTARY CONTRIBUTIONS	Additional optional contributions by employees to a pension plan which are used to increase their pension benefits, and which do not obligate employers to make any concurrent additional contributions. SEE also VOLUNTARY ADDITIONAL PENSION PLANS.

ANNUITY	Series of payments continuing either for a specified period or while certain persons survive, or for a specified period and as long thereafter as certain persons survive.
AVAILABLE LIMITS	Amounts of life insurance available to members of voluntary plans.
AVERAGED	A technique used in calculating a common premium rate for a group insurance or disability income benefit plan. Individual premium rates are applied to the appropriate amount of insurance for each individual, the results are added up, then adjusted and divided by the total amount of insurance, to give an average premium rate for a plan. SEE also PREMIUM RATES.
BENEFIT SCHEDULES	Lists or tabulations of benefits that employees are entitled to under benefit plans. For example, life insurance coverage equal to two times annual earnings.
CAFETERIA APPROACH	Instead of a standard benefit package for all employees, employees are allocated a certain benefit plan contribution which they use to purchase various available benefits in various available amounts, according to their individual choice. A type of defined contribution benefit plan.
COMMON-LAW SPOUSE	Co-habitation by a man and woman, without solemnization of marriage, in a relationship indicating some degree of permanence in its duration and the assumption of roles of husband and wife towards each other is often termed a "common-law marriage", and the participants "common-law wife", "common-law spouse" and less frequently, "common-law husband". The Common Law which forms part of the legal structure in Ontario does not in fact recognize the existence of such relationships and no specific legal rights or obligations flow from them. Society, however, has acknowledged that relationships akin to marriage are created by this type of co-habitation and Statute Law, as opposed to the Common Law, has been passed to acknowledge these relationships and confer certain legal rights and obligations upon them. (See Appendix IV for examples of Statutes recognizing the relationship and definitions now in use.)

COMPOSITE PENSION PLANS	Pension plans under which costs, rather than benefits, are defined by two or more formulae. For example, a combination of money-purchasing and profit-sharing.
COMPULSORY RETIREMENT DATES	Dates at which employees are required to retire. Under The Ontario Human Rights Code, employees may not be retired compulsorily before 65, by virtue of age alone.
CONTRIBUTIONS	Payments by employees and/or employers towards the cost of benefits.
CONTRIBUTION ASSISTANCE	Payments by employers towards the cost of employee benefits.
CONTRIBUTION LEVELS	Amounts of contributions which may vary in relation to benefit schedules or other factors.
CONTRIBUTION RATES	Rules for sharing the unit cost of benefits between employers and employees.
CONTRIBUTORY PLANS	Plans in which employees contribute towards costs.
DEATH BENEFITS	In a pension plan, death benefits may be paid in a lump-sum form, such as the return of an employee's contributions, or by installments for a guaranteed period. Opposite to survivor income benefits.
DEFINED BENEFIT PLANS	Plans in which benefits are determined by specified rules, and the costs are variable. For example, unit benefit pension plans are the main type of defined benefit pension plans.
DEFINED CONTRIBUTION PLANS	Plans in which costs are determined by specified rules and benefits are variable. For example, money-purchase pension plans are the main type of defined contribution pension plans.
DEPENDENCY BENEFITS	Increased benefits that are first payable during an employee's lifetime in respect of persons who are defined as dependents of employees under the terms of a plan.
DEPENDENTS LIFE INSURANCE	These benefits are provided in conjunction with employees' life insurance. The amount of insurance is typically $1,000 on the spouse and $500 on each child. A composite premium rate is charged, such as 35¢ a month if only one dependent exists, or 50¢ a month if more than one dependent exists.

DISABILITY INSTALLMENT BENEFITS	When employees become disabled, as defined under the plan, and leave active employment, then monthly installments are payable during the continuance of disability. Typically, 60 installments, each equal to one-sixtieth of the amount of life insurance, are payable. On death, the balance of the unpaid installments are payable to the beneficiaries, while on recovery the balance of the unpaid installments constitute the employee's effective amount of life insurance. During disability, premiums are waived. These benefits are provided under life insurance contracts.
DISABILITY PENSIONS	Pensions paid to employees who are defined as disabled under the terms of a plan.
DISABILITY RETIREMENT	When an employee leaves his or her employer because of disability and receives a disability pension.
DISABILITY WAIVER BENEFITS	When employees become disabled as defined under the plan, and leave active employment, their life insurance premiums are waived and their life insurance coverage is continued, either up to 65, or for life, as provided under the plan. Continued proof of disability is required. These benefits are provided under life insurance contracts.
DOUBLE INDEMNITY BENEFITS (D.I.)	Similar to Accidental Death and Dismemberment Benefits, with the amount of insurance equal to the amount of life insurance, but without the dismemberment benefit. A.D. & D. benefits are normally provided in preference to these benefits.
EARLY RETIREMENT	When employees leave their employer before becoming entitled to normal pension, but are entitled to a reduced pension at such earlier date. The amount of the reduction may be calculated according to a reduction factor or a uniform discount factor. SEE also REDUCED PENSIONS.
ELECTIVE OPTIONS	Instead of a pension payable in the normal form, employees may elect some other forms. For example, instead of a pension payable to the employee for life, an employee may choose a reduced pension payable to himself or herself, with two-thirds going to his or her surviving spouse after death. SEE also OPTIONAL FORMS.

ELIGIBILITY REQUIREMENTS	Terms under which employees are enrolled in a benefit plan. For example, after one year of service. SEE also ACCESS.
EMPLOYEE BENEFIT PLANS	Programs organized to provide money benefits to employees, other than direct wages, for the purpose of either a) income continuance, for example, on death, disability, or retirement, or b) expense reimbursement, for example, on death, sickness or accident.
EMPLOYEE CONTRIBUTIONS	That portion of the cost of employee benefits that is paid by employees.
EMPLOYEE-PAY-ALL PLANS	Plans under which employees pay the full cost of their benefits.
EMPLOYER CONTRIBUTIONS	That portion of the cost of employee benefits that is paid by an employer. An employer contribution is equal to the total cost less employee contributions, if any.
EMPLOYER-PAY-ALL PLANS	Plans under which employers pay the full cost of benefits. Also described as non-contributory plans. SEE also VOLUNTARY EMPLOYEE-PAY-ALL PLANS or FEATURES OF PLANS.
EMPLOYER-SPONSORED PLANS	Private benefit plans organized by employers, in contrast to public plans provided by law, or private plans provided by trade unions or professional associations.
EXTENDED HEALTH INSURANCE PROGRAMS	Insured plans which provide for expense reimbursement for health services not reserved by the Ontario Health Insurance Plan (OHIP).
FLAT BENEFIT FORMULAE	Rules for determining pension benefits, under which the benefit is either a flat amount for each year of service or a flat amount independent of service.
FULLY ACCRUED PENSIONS	Pension benefits accumulated for service to date, and payable in full at the normal pensionable date, or in a reduced amount before that date.
HEAD-OF-HOUSEHOLD CRITERIA	Definitions used to determine eligibility and/or level of benefits which identify one spouse as the primary earner in the household.
INCOME BENEFITS	Benefits paid in regular instalments. Opposite to lump sum benefits.
INCREASED BENEFITS	Guaranteed benefits over and above primary employee benefits. Increased benefits are determined by a formula, and are usually payable to employees in respect of their dependents. SEE also DEPENDENCY BENEFITS.

INSURED PENSION PLANS	Pension plans administered by life insurance companies.
INTEGRATED PLANS	Private benefit plans under which contributions and benefits are adjusted to reflect corresponding items under public plans covering the same employees. For example, many private pension plans are integrated with the Canada Pension Plan.
LOCKING-IN	The Pension Benefits Act of Ontario and similar laws in other jurisdictions in Canada provide that employees' pension contributions for service after a date specified in the Act must be applied to the provision of deferred life annuities (as defined under the Act) when employees, having satisfied the minimum vesting requirements under the Act, resign from their employer's service. Notwithstanding the above, if a pension plan so provides, a limited cash refund may be paid to employees on resignation. SEE also VESTING.
LONGEVITY	Length of life.
LONG-TERM DISABILITY PLANS	Plans to continue a portion of employees' earnings after they have become unable to perform gainful activity because of accident or sickness. For example, payments may commence after a period such as three or six months and may continue for up to five or ten years, or up to the date when employees reach 65 years of age.
LUMP SUM BENEFITS	Benefits paid in a single sum, usually at death, disability, or termination from pension plans. Opposite to income benefits.
MAXIMUM ELIGIBILITY AGES	Ages beyond which employees may not become enrolled in benefit plans.
MONEY-PURCHASE PENSION PLANS	Types of pension plans under which contributions from both employers and employees are specified, usually as a percentage of the employee's salary, with the pension benefit being whatever the accumulated contributions will provide. Type of defined contribution plan.
MORBIDITY	Incidence of sickness and accident.
MORTALITY	Incidence of death.
NON-INSURED SICK PAY PLANS	Sick pay plans that are not administered by insurance companies.
NON-INTEGRATED PLANS	Private benefit plans under which neither contributions nor benefits are adjusted with reference to corresponding items under public plans covering the same employees. Opposite to integrated plans.

NORMAL FORMS	Standard rules for paying pensions, which also establish the lump sum value of a pension. For example, where pension is payable for life, or for life but guaranteed for 10 years in any event. SEE also OPTIONAL FORMS.
NORMAL PENSIONABLE DATES	Dates when unreduced pensions first become available.
OPTIONAL FORMS	Variation of normal forms. The lump sum value of pensions are the same, but the periodic payments are adjusted according to the option elected. For example, adjusted pension payable for life with two thirds continued to a surviving spouse. SEE also NORMAL FORMS and ELECTIVE OPTIONS.
OHIP	The Ontario Health Insurance Plan, which provides reimbursement of health and medical costs to Ontario residents through provincial law.
PARTICIPATION REQUIREMENTS	SEE also ELIGIBILITY REQUIREMENTS AND ACCESS. Can also refer to requirements under insurance plans that a certain percentage of eligible employees must enrol, and remain enrolled, for coverage to be effective.
PENSIONS	Periodic payments received from public or private plans by retired or disabled persons, surviving spouses and/or children, or dependent spouses and/or children.
PENSION FORMULAE	Rules for calculating pension benefits.
PENSIONABLE DATES	Dates when pensions become available. Reduced pension on early pensionable date, normal or unreduced pension on normal pensionable date, and increased pension, if a plan so provides, on postponed pensionable date.
POSTPONED RETIREMENT	When employees leave their employer after their normal pensionable date, with their pension adjusted according to the rules of the plan.
PREGNANCY BENEFITS	Either income continuance during absence from work due to pregnancy and/or pregnancy complications, or reimbursement of health and medical expenses due to pregnancy and/or pregnancy complications.
PREMIUM RATES	Unit charges made by insurance companies for underwriting risks. For example, extended health insurance premium of $2.00 a month per family. SEE also AVERAGED.
PRIMARY BENEFITS	Benefits payable only to and in respect of employees. In contrast, guaranteed increased benefits and/or survivor benefits are paid in addition to primary benefits because of the existence of persons who are defined as dependents or survivors of employees under the terms of a plan.

PROFIT SHARING PENSION PLANS	Types of pension plans under which benefits are purchased by employer contributions which are determined by reference to their profits and then allocated by a formula among plan members. Essentially money-purchase pension plans.
REDUCED PENSIONS	Amounts of pension payable when employees retire before a normal pensionable date. SEE also REDUCTION FACTORS and UNIFORM DISCOUNT FACTORS.
REDUCTION FACTORS	Actuarial factors, either exact or approximate, used to calculate the reduction in normal pensions to arrive at reduced pensions. SEE also UNIFORM DISCOUNT FACTORS.
REQUIRED CONTRIBUTIONS	Compulsory contributions to a benefit plan that are required from employees.
RETIREMENT DATES	Dates when employees cease employment under the terms of pension plans. Usually refers to the dates at which normal pensions become available.
SELF-INSURED PLANS	Benefit plans under which those who are insured bear the risks. For example, where employees pay into a fund which they administer and which is the only source of the scheduled benefit payments.
SERVICE PENSIONS	Pensions payable for service at early, normal, or postponed retirement. Excludes pensions payable in the event of death or disability.
SERVICE REQUIREMENTS	Rules whereby access to membership, payment of benefit, or some other features of benefit plans are conditional upon a minimum period of employment with an employer. For example, vesting of pension benefits is usually related to completion of a period of service with an employer.
SHORT-TERM DISABILITY PLANS	Plans to continue a portion of employees' earnings while they are absent from work because of sickness or accident not related to their occupation. For example, payments may start on the first day away from work in the case of an accident, and on the eighth day away from work in the case of sickness. Payments may continue for up to 13 or 26 weeks. Also known as weekly income benefits or weekly indemnity.
STATUTORY PLANS	Public benefit plans established by government through legislation. For example, the Canada Pension Plan is established through a federal statute, while OHIP is established through a provincial statute.
SURVIVOR INCOME BENEFITS	Separate, life-time income benefits that become payable after an employee's death either to or in respect of persons who are defined as surviving dependents of employees under the plan. Under pension plans, payment is usually made to surviving spouses or to or in respect of dependent children. Under life insurance plans, they are usually paid to surviving spouses or other identified persons. Do not include elected options arising from conversion of primary benefits, or death benefits payable in installments.

TERMINATION BENEFITS	Pension benefits available to employees who terminate employment before becoming eligible for pension. May be paid in the form of a return of employee contributions, usually with interest, or the provision of a deferred life annuity.
UNIFORM DISCOUNT FACTORS	Uniform factors used to calculate reduction in normal pensions to arrive at reduced pensions in the event of early retirement. For example, one-half per cent reduction for each month between the actual and the expected pensionable dates. Also known as formula adjustment. Opposite to true actuarial adjustments, where these calculations vary by the age and sex of individual employees. SEE also REDUCTION FACTORS.
UNIT BENEFIT FORMULAE	Rules for determining pension benefits, under which the benefit is a percentage of earnings, as defined for each year of service. Defined earnings may relate to the total service of employees or their final years of service only.
UNIT BENEFIT PENSION PLANS	Pension plans under which benefits are determined by a unit benefit formula. Type of defined benefit plan.
VESTING	The interest employees acquire in the contributions made on their behalf by their employer. On resignation from service, if employees have satisfied specified service and perhaps age requirements, the employer's contributions will be applied to the purchase of a pension for the employee. The Pension Benefits Act of Ontario requires vesting of the deferred life annuity, as a minimum, after employees are 45 and have completed 10 years of continuous service with their employer. On death or disability, part or all of the employer's contributions may be paid in cash, rather than in the form of a pension. SEE also LOCKING-IN.
VOLUNTARY ADDITIONAL PENSION PLANS	Pension plans that supplement compulsory pension plans, with enrollment at an employee's option. SEE also ADDITIONAL VOLUNTARY CONTRIBUTIONS.
VOLUNTARY EMPLOYEE-PAY-ALL PLANS OR FEATURES OF PLANS	Plans under which enrollment is optional and employees pay the full cost. These plans often supplement compulsory plans, to which employers contribute.